

**ATTORNEYS AT LAW**

777 South Figueroa Street
34th Floor
Los Angeles, CA 90017
T 213.612.7800
F 213.612.7801

Amber Maltbie
D 213.612.7803
amaltbie@nossaman.com

January 31, 2024

VIA EMAIL: cela@fec.gov

Wanda D. Brown
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: FEC Response to MUR 8188

Dear Ms. Brown:

This letter jointly responds to the complaint in MUR 8188 on behalf of our clients: Senator Susan Rubio, Susan Rubio for Senate 2026 (the "State Committee"), and Susan Rubio for Congress (the "Federal Committee").

1. Introduction

Senator Susan Rubio is currently a state Senator for California, and the State Committee is her state reelection committee. She is also concurrently a candidate for Congress, and the Federal Committee is her principal campaign committee.

The Federal Election Commission ("FEC" or "Commission") should dismiss this complaint in MUR 8188. The complaint's soft-money allegations have no merit because Senator Rubio sent the *Rubio Report* newsletter pursuant to the concurrent federal/state candidate exception in the FEC's soft-money regulations. Moreover, the newsletter was not in connection with an election as it was a communication about the Senator's **state** legislative record to her **state** constituents. Finally, although the QR Code in the newsletter inadvertently linked to the Senator's now-federal campaign website, the value of the link, if any, was *de minimis* and due to vendor error.

2. The Commission should find no reason to believe that a soft-money violation occurred.

- a. The mailer was sent by Senator Susan Rubio's *state* reelection campaign and therefore meets the exception for concurrent federal and state candidates at 11 C.F.R. § 300.63.

The mailer at issue does not violate the FECA because it was paid for by Senator Rubio's state reelection campaign and she is the only state candidate referred to in it. 52 U.S.C. § 30125(e)(2) specifically exempts spending of non-federal funds by a state candidate when the funds are spent in furtherance of that candidate's own electoral efforts. As the Commission's implementing regulation, 11 C.F.R. § 300.63, states: "Section 300.62 [soft-money candidate restrictions] shall not apply to a federal candidate ... who is a candidate for State or local office, if the solicitation, receipt, or spending of funds is permitted under State law; and refers only to that State or local candidate, to any other candidate for that same State or local office or both...."

The spending of state reelection funds by Senator Rubio meets the first prong of the exception because Senator Rubio is a candidate for reelection to her State Senate seat under California law.¹ It also meets the second prong because Senator Rubio is the only candidate mentioned in the mailer. And although the newsletter is legislative in nature, see *infra*, California law permits officeholders to use state campaign funds in furtherance of constituent services, such as the newsletter at issue here.²

Accordingly, the Commission's inquiry into the alleged soft-money violation should end here – the exception is met and there is consequently no reason for the Commission to believe a violation occurred.

- b. The mailer is an appropriate nonfederal expense because it is not "in connection" with an election and therefore not subject to BCRA's soft-money rules.

The newsletter is of the type that state officeholders routinely send to their constituents and that the Commission has determined to be permissible under federal campaign finance law.³ First, Senator Rubio began sending the *Rubio Report* to her state constituents within her district prior

¹ Cal. Gov. Code § 82007(b).

² Cal. Gov. Code § 89512(a).

³ See, e.g., Factual & Legal Analysis at 6, MUR 7954 (Kevin Mullen for Congress); MUR 7677 (McDermott for Congress); MUR 8083 (Tom Patti for County Supervisor 2016); Advisory Opinion 2009-26 (Coulson) at 7.

to becoming a federal candidate.⁴ This issue of the *Rubio Report* was no different and only was mailed within her district.⁵

Second, the newsletter only discussed Senator Rubio's state legislative record:

- Like past issues, the newsletter is titled "The Susan Rubio Report: **Legislative** Update," (emphasis added), demonstrating the purpose of the mailer is related to Senator Rubio's legislative responsibilities; and
- The newsletter highlights Senator Rubio's legislative and constituent efforts, topics germane to her legislative responsibilities.

Finally, the newsletter does not promote or support (*i.e.*, PASO) Senator Rubio as a federal candidate. As the Commission has stated: "the mere identification of an individual who is a Federal candidate does not, in and of itself, promote, support, attack or oppose that candidate."⁶ Further, "a statement of a federal candidate's previous or ongoing legislative efforts does not PASO that candidate."⁷ The *Rubio Report* at issue is akin to the types of communications that the Commission has consistently determined were **not** "in connection" with an election and therefore outside of the reach of the candidate soft-money restrictions.⁸

3. The QR Code was inadvertently included in the Rubio Report as a result of vendor error and the value of the link, if any, is *de minimis*.

The complaint is correct that the QR Code in the newsletter linked to www.susanrubio.com, which at the time and currently, is the website for the Federal committee. However, the September *Rubio Report* was based on a template that incorporated common elements in each issue.⁹ The federal committee purchased the www.susanrubio.com URL in July, and the vendor who produces the *Rubio Report* was instructed to cease using it. For the September issue of the *Rubio Report*, the URL was removed from every other placement, but the QR code was inadvertently left on. Thus, inclusion of that QR Code in the September issue of the *Rubio Report*

⁴ See Declaration of Hrag Yedalian, Attachment A, ¶ 3 ("Yedalian Affidavit") ("The Rubio Report has generally published and disseminated monthly since March 2023."); *see, e.g., Rubio Report*, April Edition, Attachment B.

⁵ *See id.*, ¶ 3 ("The Rubio Report provides legislative and community updates to constituents living in the 22nd District.").

⁶ *See* Advisory Opinion 2009-26 (Coulson) at 7, *cited by* Factual & Legal Analysis at 6, MUR 7954 (Kevin Mullen for Congress).

⁷ Factual & Legal Analysis at 6, MUR 7954 (Kevin Mullen for Congress).

⁸ *See, id.*, MUR 7677 (McDermott for Congress); MUR 8083 (Tom Patti for County Supervisor 2016).

⁹ *See* Yedalian Declaration ¶ 4 ("To facilitate production of her direct mailers, [Yedalian] ha[s] developed templates that serve as the basis for each mailer design, including [Senator Rubio's] newsletter.").

Response to MUR 8188
January 31, 2024
Page 4

was an inadvertent vendor error and contrary to the instructions of Senator Rubio.¹⁰ In prior editions of the newsletter, that QR Code linked to the State committee's website, which had used the same URL.¹¹

Moreover, if the use of the QR Code in the newsletter represents any value, then its inclusion only resulted in a *de minimis* in-kind contribution, and the Commission should dismiss this allegation accordingly.

* * * * *

Based on the foregoing reasons, the Commission should dismiss this matter with respect to Senator Rubio, the State Committee, and the Federal Committee.

Sincerely,



Amber Maltbie
Nossaman LLP



William A. Powers
Nossaman LLP

AM:sda

Attachments:
Declaration of Hrag Yedalian
Rubio Report, April Edition

¹⁰ See *id.*, ¶ 5 (“Senator Rubio instructed [Yedalian] to cease all use or inclusion of the URL www.susanrubio.com in the Rubio Report.”)

¹¹ See *Id.*, ¶ 4 (“Until July, 2023, this URL hosted Senator Rubio’s state campaign committee.”)

Response to MUR 8188
January 31, 2024
Page 5

ATTACHMENT A

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.

3
4 Dated: January 31, 2024



Hrag Yedalian

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Response to MUR 8188
January 31, 2024
Page 6

ATTACHMENT B

APRIL EDITION

THE RUBIO REPORT

LEGISLATIVE UPDATE

FOR OUR FAMILIES



Piqui's Law (SB 331) to Reform Family Court and Protect Children from Family Violence Passes Key Committee

Piqui's Law honors the memory of Ana Estevez's five year old son who was murdered by his abusive father. Rubio and Estevez are challenging the system and pushing for critical training for judges so no other parent experiences this type of loss.

PUBLIC SAFETY

Rubio Pushes Common Sense Gun Reforms

Gun violence continues to be a common occurrence and families are left devastated by the loss of a loved one.

As a member of the Bicameral Legislative Gun Violence Prevention Group, Rubio continues to push for gun reforms like SB2 and AB36 that will keep guns out of the hands of domestic violence abusers and other dangerous people.



Sexually Abused and Trafficked Children Will Now be Supported Under SB 545

Rubio's SB 545 SAFE Children Act will provide children who are sexually abused or trafficked with the opportunity to heal from their trauma. Thank you to brave survivors who have healed and use their voice to help others.



FOR OUR CHILDREN



Rubio joined Survivors of Human Trafficking at a Press Conference to Urge Passage of their Bill SB14 that Would Make Trafficking of a Minor a Serious Felony.

Domestic Violence Champion "Dreamer and Doer" Award

Rubio passed her landmark legislation SB 914



THE RUBIO REPORT

LEGISLATIVE UPDATE

APRIL EDITION

Rubio Tackles Affordability and Availability of Insurance Coverage for Consumers



As Chair of the Senate Insurance Committee, Rubio held an oversight hearing to assist consumers burdened by insurance availability and affordability issues created by climate change and extreme weather events that have left businesses and homeowners vulnerable. Rubio will continue oversight hearings to ensure consumers are protected.

Two City Parks Funded by Rubio Expected to be Completed by End of Year



Rubio Helped Fund Over 600 Affordable Housing Units that Inspired Housing Solutions Across Our State



The San Gabriel Valley Regional Housing Trust, created by Rubio legislation in 2019, has already helped fund the construction of more than 600 affordable housing units, and several tiny home villages that house and transition families struggling with homelessness into permanent housing. Rubio's SB20 will now expand the successful model statewide.

Rubio Stands with Working Families

