

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

The Nevada State Democratic Party  
1210 Valley View, Suite 114  
Las Vegas, NV 89102

Complainant,

v.

Sue Lowden  
P.O. Box 531450  
Henderson, NV 89053,

Respondent.

**COMPLAINT**

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Sue Lowden requesting that the Federal Election Commission investigate violations of the Federal Election Campaign Act, as described below.

**A. FACTUAL ALLEGATIONS**

Sue Lowden is a candidate to the United States Senate from the state of Nevada. She will be a candidate in the Republican primary, to be held on June 8, 2010.

Though the date of the primary has not yet passed, and Lowden is not yet a candidate for the general election, according to a recent press report, she has been spending funds raised for the general election to aid her primary election. In her pre-primary report, filed on May 26, 2010, Lowden reported having \$209,325.03 cash on hand. According an article in the *Las Vegas Review Journal*, these funds were all raised for the 2010 general election. *Las Vegas Review Journal*, 5/27/2010.<sup>1</sup>

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<sup>1</sup> The article is available at [http://www.lvrj.com/blogs/politics/Lowden\\_cites\\_accounting\\_error\\_for\\_using\\_some\\_general\\_election\\_money.html?ref=139](http://www.lvrj.com/blogs/politics/Lowden_cites_accounting_error_for_using_some_general_election_money.html?ref=139).

Yet, the Lowden campaign admits to spending nearly \$18,000 in general election funds before Lowden has become a candidate in the general election. According to campaign manager Robert Uithoven, "we had believed that the general election money had been untouched, but about half of 1 percent was not left untouched." *Id.* The campaign has admitted that it is using these contributions to pay for primary election expenses, and not general election expenses. According to Uithoven, "we're spending money as it comes in." "We have enough to win, but we're not going to come out of this primary with cash on hand." *Id.* Uithoven blamed the use of the general election funds on an "accounting error."

The campaign also admits to having filed an erroneous report, telling the *Las Vegas Review Journal* that it actually has \$227,063 in general election funds set aside, nearly \$18,000 more than it reported. *Id.*

## **B. LEGAL ANALYSIS**

### **1. Lowden has violated Commission rules by spending general election funds to support her primary election.**

The Federal Election Campaign Act defines limits the amount of money that any person may contribute to Federal candidates and political committees. 2 U.S.C. §§ 441a(a), (f). It is illegal for a candidate to accept more than \$2,400 per election in which he or she is a candidate. *Id.* § 441a(a)(1).

Commission rules permit a candidate to raise funds for a general election before the date of a primary election. 11 C.F.R. § 102.9(e)(1). But, in order to protect the integrity of the Act's contribution limits, candidates are not permitted to spend general election contributions to support their primary elections. *See* FEC Adv. Op. Nos. 1980-122 (Myerson), 1986-17 (Green). Further, the rules require the campaign to keep a careful accounting to distinguish between contributions that are designated for the primary and the general elections, and must be able to

demonstrate that, prior to the primary election, "recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made." 11 C.F.R. § 102.9(e)(2). If the candidate does not become a candidate for the general election, all contributions designated for the general election must be refunded to the contributors. *Id.* § 102.9(e)(3).

The facts reported in the *Las Vegas Review Journal* show that Lowden has violated these provisions. Her campaign manager told the *Las Vegas Review Journal* that almost \$18,000 general election funds were "not left untouched." Thus, by the campaign's own admission, the campaign spent funds that were designated for the general election in connection with the primary election, in clear violation of section 441a(f). *See* FEC Adv. Op. Nos. 1980-122 (Myerson), 1986-17 (Green).<sup>2</sup>

In addition, the article demonstrates that Lowden failed to keep a proper accounting of her general election contributions. The campaign itself admits that it made an "accounting error." And the campaign has itself suggested that its recorded cash on hand fell below the amount raised for the general. Uithoven stated that "we're spending money as it comes in" and that the campaign would not "come out of this primary with cash on hand." If the campaign has spent all of its primary funds as well as nearly \$18,000 in general election funds, then the campaign's cash on hand must have fell below the amount raised for the general. This is a clear violation of Commission rules.

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<sup>2</sup> In Advisory Opinion 1986-17, the Commission noted a narrow exception that permits a candidate to spend general election funds for *general election* expenses before the date of a primary, where it is necessary to make advance payments or deposits to vendors for services that will be rendered for the general election. However, the Commission squarely found that it is a violation of section 441a(f) to spend general election funds to support the primary election. *See* FEC Adv. Op. No. 1986-17. The *Las Vegas Review Journal* article makes it clear that Lowden was spending general election funds for *primary* election expenses, not general election expenses. This fact was confirmed by Lowden's own campaign manager when he stated that the campaign was spending all available funds on the primary. According to Uithoven, "we're spending money as it comes in. We have enough to win, but we're not going to come out of this primary with cash on hand."

**2. Lowden failed to report contributions.**

The Federal Election Campaign Act ("Act") requires that political committees report all contributions and expenditures to the Commission. 2 U.S.C. § 434. As described above, the Lowden campaign has stated that it failed to report almost \$18,000 in general election contributions. The Commission should investigate to determine whether the campaign has indeed failed to do so.

**C. REQUESTED ACTION**

For the reasons described above, we respectfully urge the Commission to investigate whether Respondents have violated FECA by spending general election funds before the date of the primary, for failure to comply with the Commission's accounting rules, and for failing to report contributions. We further request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,

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SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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