



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3424

DATE FILMED 4/29/92 CAMERA NO. 2

CAMERAMAN S.E.G.

92040900793

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: 23 August 1991

ANALYST: PAT SHEPPARD

I. COMMITTEE: People for Carlos Lucero, Inc.
(C00237867)
Carolyn E. Daniels, Treasurer
2555 S. Meade Street
Denver, CO 80219

II. RELEVANT STATUTE: 2 U.S.C. §434(a)(6)
11 CFR §104.5(f)

III. BACKGROUND:

Failure to File Forty-Eight Hour Notifications

The People for Carlos Lucero, Inc. committee ("the Committee") has failed to file the required Forty-Eight (48) Hour Notification ("48-Hour Notices") for one (1) contribution/loan in the amount of \$35,000 received prior to the 1990 Primary Election.

The candidate was involved in the 1990 Primary Election held on August 14, 1990. Prior Notice was sent to the Committee on July 9, 1990 (Attachment 2). The Notice includes a section titled "Last-Minute Contributions". This section reads "Committees must also file special notices on contributions of \$1,000 or more, received during the period July 26 through August 11, 1990. The notice must reach the appropriate federal and state offices within 48 hours of the committee's receipt."

Schedules A and C of the 1990 October Quarterly Report indicate that the Committee failed to file one (1) 48-Hour Notice for a contribution/loan received during the aforementioned period (Attachment 3). The following is the name of the contribution/loan for which no 48-Hour Notice was filed:

<u>Contributor Name</u>	<u>Date</u>	<u>Amount</u>
Carlos F. Lucero (loan guarantor)	08/07/1990	\$35,000

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On June 18, 1991, a Request for Additional Information ("RFAI") was sent to the Committee (Attachment 4). The RFAI notes on an informational basis that the Committee may have failed to file one or more of the required 48-Hour Notices for "last minute" contributions of \$1,000 or more. The notice requests the Committee to review their procedures for checking contributions received during the aforementioned time period. In addition, the notice states that although the Commission may take legal steps, any response would be taken into consideration.

On July 23, 1991, a Mr. Boss called a Reports Analysis Division analyst (Attachment 5). Mr. Boss stated that he was unemployed and seeking work which prohibited him from doing the work for the Committee. He stated that he would have the treasurer call as soon as possible to discuss the outstanding letters.

On August 8, 1991, the treasurer (Ms. Carolyn Daniels) called the analyst (Attachment 6). Ms. Daniels stated that she needed more time in order to respond to the outstanding letters. I told her of the urgency of the matter. She said that she would amend the report as soon as possible.

On August 13, 1991, the Committee responded by letter (Attachment 7). In the letter the treasurer stated that the Committee has received the RFAIs and that they were presently compiling the information needed to properly respond.

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None.

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CANDIDATE/COMMITTEE/DOCUMENT	RECEIPTS		DISBURSEMENTS		COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
	OFFICE SOUGHT/	PARTY	PRIMARY	GENERAL			
LUCERO, CARLOS	SENATE	DEMOCRATIC PARTY			COLORADO	1990 ELECTION	ID# S4C000056
1. STATEMENT OF CANDIDATE							
1989 STATEMENT OF CANDIDATE						31JUL89	4 89SEN/008/1429
2. PRINCIPAL CAMPAIGN COMMITTEE							
PEOPLE FOR CARLOS LUCERO INC							ID #C00237867 SENATE
1989 STATEMENT OF ORGANIZATION						3AUG89	4 89SEN/008/3393
STATEMENT OF ORGANIZATION - AMENDMENT						11SEP89	2 89SEN/009/1195
STATEMENT OF ORGANIZATION - AMENDMENT						16NOV89	3 89SEN/009/3722
YEAR-END		84,917		48,840		1JUL89 -31DEC89	57 90SEN/005/1238
YEAR-END - AMENDMENT		-		-		1JUL89 -31DEC89	7 90SEN/008/1885
REQUEST FOR ADDITIONAL INFORMATION						1JUL89 -31DEC89	3 90FEC/632/3389
1990 STATEMENT OF ORGANIZATION - AMENDMENT						26FEB90	3 90SEN/006/1377
48 HOUR CONTRIBUTION NOTICE						20AUG90	3 90SEN/014/4097
STATEMENT OF ORGANIZATION - AMENDMENT						10OCT90	3 90SEN/016/0731
APRIL QUARTERLY		49,044		56,707		1JAN90 -31MAR90	40 90SEN/008/1845
REQUEST FOR ADDITIONAL INFORMATION						1JAN90 -31MAR90	4 90FEC/651/3945
REQUEST FOR ADDITIONAL INFORMATION 2ND						1JAN90 -31MAR90	5 90FEC/654/3357
REQUEST FOR ADDITIONAL INFORMATION						1JAN90 -31MAR90	4 91FEC/698/2264
REQUEST FOR ADDITIONAL INFORMATION 2ND						1JAN90 -31MAR90	1 91FEC/700/4489
JULY QUARTERLY		48,550		56,550		1APR90 -30JUN90	48 90SEN/012/1735
REQUEST FOR ADDITIONAL INFORMATION						1APR90 -30JUN90	2 90FEC/658/4718
REQUEST FOR ADDITIONAL INFORMATION 2ND						1APR90 -30JUN90	4 90FEC/670/1374
PRE-PRIMARY		14,412		15,751		1JUL90 -25JUL90	31 90SEN/014/2053
REQUEST FOR ADDITIONAL INFORMATION						1JUL90 -25JUL90	1 90FEC/658/4714
REQUEST FOR ADDITIONAL INFORMATION 2ND						1JUL90 -25JUL90	4 90FEC/670/1378
OCTOBER QUARTERLY		65,122		65,087		26JUL90 -30SEP90	44 90SEN/020/1139
OCTOBER QUARTERLY - AMENDMENT		-		-		26JUL90 -30SEP90	1 91SEN/009/0657
REQUEST FOR ADDITIONAL INFORMATION						26JUL90 -30SEP90	2 91FEC/698/2269
REQUEST FOR ADDITIONAL INFORMATION 2ND						26JUL90 -30SEP90	1 91FEC/700/4488
YEAR-END		11,436		13,171		1OCT90 -31DEC90	30 91SEN/002/2547
REQUEST FOR ADDITIONAL INFORMATION						1OCT90 -31DEC90	2 91FEC/698/2272
REQUEST FOR ADDITIONAL INFORMATION 2ND						1OCT90 -31DEC90	9 91FEC/700/4479
TOTAL		273,481	0	266,106			317 TOTAL PAGES
3. AUTHORIZED COMMITTEES							
4. JOINT FUNDRAISING COMMITTEES AUTHORIZED BY THE CAMPAIGN							

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All reports have been reviewed.
Cash on hand as of 12/31/90; \$40.98
Debts owed by committee as of 12/31/90: \$106,282.79

FEDERAL ELECTION COMMISSION
1991-1992
CANDIDATE INDEX OF SUPPORTING DOCUMENTS - (E)

DATE 19AUG91

PAGE 1

CANDIDATE/COMMITTEE/DOCUMENT	OFFICE SOUGHT/	PARTY	RECEIPTS		DISBURSEMENTS		COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
			PRIMARY	GENERAL	PRIMARY	GENERAL			
LUCERO, CARLOS	SENATE	DEMOCRATIC PARTY					1990 ELECTION	ID# S4CD00056	
1. STATEMENT OF CANDIDATE									
2. PRINCIPAL CAMPAIGN COMMITTEE									
PEOPLE FOR CARLOS LUCERO INC								ID #C00237867 SENATE	
1991 MISCELLANEOUS REPORT	TO FEC						13AUG91	3 91SEN/009/0657	
APRIL QUARTERLY			1,496		1,306		1JAN91 -31MAR91	22 91SEN/004/1045	
TOTAL			1,496	0	1,306	0		25 TOTAL PAGES	
3. AUTHORIZED COMMITTEES									
4. JOINT FUNDRAISING COMMITTEES AUTHORIZED BY THE CAMPAIGN									

All Reports have been reviewed

Cash on Hand as of 3/31/91 - \$ 230.79

Debts owed by as of 3/31/91 -\$106,354.12

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PRIMARY ELECTION REPORT NOTICE

Attachment # 2

Page 1 of 1

FEDERAL ELECTION COMMISSION

COLORADO

July 9, 1990

REPORT	REPORTING PERIOD1/	REG./CERT. MAILING DATE2/	FILING DATE
PRE-PRIMARY	07/01/90 - 07/25/90	07/30/90	08/02/90
OCTOBER QUARTERLY	07/26/90 - 09/30/90	10/15/90	10/15/90

WHO MUST FILE

PRINCIPAL CAMPAIGN COMMITTEES OF CONGRESSIONAL "CANDIDATES" who seek nomination in the August 14, 1990, Colorado Primary.

WHAT MUST BE REPORTED

All financial activity that occurred during the reporting period (or before, if not previously reported).

REPORTING FORMS

Candidate committees use Form 3 (enclosed). If the campaign has more than one authorized committee, the principal campaign committee must also file a consolidated report on Form 32.

WHERE TO FILE

Consult the instructions on the back of the Form 3 Summary Page. Note state filing requirements also.

LABEL

Committees should affix the peel-off label from the envelope to Line 1 of the report. Corrections should be made on the label.

LAST-MINUTE CONTRIBUTIONS

Committees must also file special notices on contributions of \$1,000 or more, received during the period July 26 through August 11, 1990. The notice must reach the appropriate federal and state offices within 48 hours of the committee's receipt.

COMPLIANCE

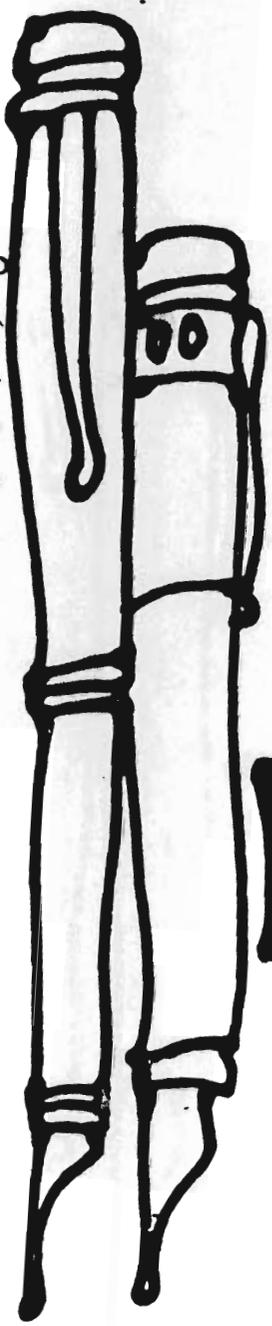
TREASURERS OF POLITICAL COMMITTEES ARE RESPONSIBLE FOR FILING ALL REPORTS ON TIME. FAILURE TO DO SO IS SUBJECT TO ENFORCEMENT ACTION. COMMITTEES FILING ILLEGIBLE REPORTS OR USING NON-FEC FORMS WILL BE REQUIRED TO REFILE.

1/The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

2/Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

FOR INFORMATION, Call: 800/424-9530 or 202/376-3120

92040900798



SCHEDULE A **ITEMIZED RECEIPTS**
Loans Made/Guaranteed By Candidate

for each category of the
Detailed Summary Page

FOR LINE NUMBER

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)

People For Carlos Lucero Inc.

A. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Carlos Lucero 311 San Juan Ave. Alamosa, CO 81101	Self	8/07/90	\$35,000
Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Occupation Attorney	Aggregate Year-to-Date > \$	
B. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
-Same as Above-		8/31/90	\$ 4000
Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Occupation	Aggregate Year-to-Date > \$	
C. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Occupation	Aggregate Year-to-Date > \$	
D. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Occupation	Aggregate Year-to-Date > \$	
E. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Occupation	Aggregate Year-to-Date > \$	
F. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Occupation	Aggregate Year-to-Date > \$	
G. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Occupation	Aggregate Year-to-Date > \$	

SUBTOTAL of Receipts This Page (optional)

TOTAL This Period (last page this line number only)

9000.00

9200408007P92

SCHEDULE C
(Revised 3/80)

LOANS

Name of Committee (in Full)
People For Carlos Lucero Inc.

A. Full Name, Mailing Address and ZIP Code of Loan Source Carlos Lucero 311 San Juan Ave. Alamosa, Co. 81101 Election: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Original Amount of Loan \$ 3000	Comprehensive Payments To Date -0-	Balance Outstanding at Close of This Period \$ 3000 plus \$ 240 Int due on maturity
Terms Date Incurred <u>7/10/90</u> Date Due <u>7/10/91</u> Interest Rate <u>8</u> % (apr) <input type="checkbox"/> Secured			

List All Endorsers or Guarantors (if any) to item A

1. Full Name, Mailing Address and ZIP Code	Name of Employer
	Occupation
	Amount Guaranteed Outstanding
2. Full Name, Mailing Address and ZIP Code	Name of Employer
	Occupation
	Amount Guaranteed Outstanding
3. Full Name, Mailing Address and ZIP Code	Name of Employer
	Occupation
	Amount Guaranteed Outstanding

B. Full Name, Mailing Address and ZIP Code of Loan Source 1st National Bank of Alamosa 730 Main St. Alamosa, CO 81101 Election: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Original Amount of Loan 35,000.00	Comprehensive Payments To Date -0-	Balance Outstanding at Close of This Period 35,000 plus 4287.50 Int due on mat.
Terms Date Incurred <u>8/7/90</u> Date Due <u>8/7/91</u> Interest Rate <u>12</u> % (apr) <input type="checkbox"/> Secured			

List All Endorsers or Guarantors (if any) to item B

1. Full Name, Mailing Address and ZIP Code Carlos Lucero 311 San Juan Ave. Alamosa, CO 81101	Name of Employer Self
	Occupation Attorney
	Amount Guaranteed Outstanding \$ 35,000.00
2. Full Name, Mailing Address and ZIP Code	Name of Employer
	Occupation
	Amount Guaranteed Outstanding
3. Full Name, Mailing Address and ZIP Code	Name of Employer
	Occupation
	Amount Guaranteed Outstanding

SUBTOTALS This Period This Page (optional)	\$35,000
TOTALS This Period (last page in this line only)	\$

Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20541

BQ-2

LN 18 1991

Carolyn E. Daniels, Treasurer
People For Carlos Lucero, Inc.
2555 S. Meade Street
Denver, CO 80219

Identification Number: C00237867

Reference: 1990 October Quarterly Report (7/26, 20-9/30/90)

Dear Ms. Daniels:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Line 10 of the Summary Page of your report discloses \$7,262.05 in outstanding loans/debts. The sum of Schedule C loans and Schedule D debts indicates \$13,012.25 in outstanding obligations. Please explain the discrepancy and amend your report. (11 CFR §104.3(d))

-Line 19, Column A of the Detailed Summary Page and Schedule C of your report discloses \$844.16 in loan interest payments. Please be reminded that only payments to loan principles should be disclosed on line 19 and Schedule C. Amend your report to delete this amount and report it on Line 17, Column A of the Detailed Summary Page.

-Commission Regulations require the continuous reporting of all outstanding debts. Review of this report indicates an omission of debts itemized on your previous report(s). (11 CFR §§104.3(d) and 104.11) Please amend your report to indicate the current status of this omitted debt: IRS - \$2,878.74

-Your previous report disclosed an outstanding debt of \$400 owed to Atter Image Productions. This report discloses payment of \$100 on this debt; however, the outstanding balance is not included on Schedule D. Please clarify and amend your report.

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1103613:259

-When a committee reports receiving a loan from the candidate, it is necessary to clarify whether or not the candidate used his/her personal funds or borrowed the money from a lending institution or any other source. If the candidate borrowed funds from a lending institution, or any other source, please provide the name of the lending institution and the complete terms of the loan. If the \$4,000 loan was from personal funds, please acknowledge that fact in an amendment to this report. It is important to note that "personal funds" is strictly defined by Commission Regulations and may be found in 11 CFR §110.10. (11 CFR §§100.7(a)(1) and 104.3(d))

-Schedule A of your report indicates that your committee may have failed to file one or more of the required 48 hour notices regarding "last minute" contributions received by your committee after the close of books for the 12 Day Pre-Primary report. A principal campaign committee must notify the Commission, in writing, within 48 hours of any contribution of \$1,000 or more received between two and twenty days before an election. These contributions are then reported on the next report required to be filed by the committee. To ensure that the Commission is notified of last minute contributions of \$1,000 or more to your campaign, it is recommended that you review your procedures for checking contributions received during the aforementioned time period. Although the Commission may take legal action, any response you wish to make concerning this matter will be taken into consideration. (11 CFR §104.5(f))

A written response or an amendment to your original report(s) correcting the above problem(s) should be filed with the Secretary of the Senate, 232 Hart Senate Office Building, Washington, DC 20510 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact us on our toll free number, (800) 424-9530. My local number is (202) 376-2480.

Sincerely,

Pat Sheppard

Pat Sheppard
Senior Reports Analyst
Reports Analysis Division

92040900802
313513170

MEMORANDUM TO FILES:
XX Telecon
Visit

DATE: July 23, 1991

NAME OF THE COMMITTEE: People for Carlos Lucero, Inc.

SUBJECT: Outstanding RFAIs

FEC REP: Pat Sheppard

COMMITTEE REP: Kerry Boss, Assistant Treasurer

Mr. Boss called today just to let the Commission know that they are not ignoring the letters that were sent to the Committee. Mr. Boss stated that he is now unemployed and spends most his days looking for work. He said that he has not had the time to work on the reports of the Committee. Mr. Boss said that he just wanted to make the initial contact and that the treasurer should be calling later. I expressed the urgency of the response.

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PEOPLE FOR CARLOS LUCERO, INC.
REPORTS ANALYSIS OGC REFERRAL
PAGE 2

ATTACHMENT # 6
PAGE 1 OF 1

MEMORANDUM TO FILES:
XX Telecon
Visit

DATE: August 8, 1991

NAME OF THE COMMITTEE: People for Carlos Lucero, Inc. (CO)

SUBJECT: Outstanding RFAIs

FEC REP: Pat Sheppard

COMMITTEE REP: Carolyn Daniels

Ms. Daniels called to say that the committee needed additional time in order to respond to the outstanding letters. I explained the Second Notice process to her and she stated that she has already received the Second Notice. I then told her that she could respond as soon as possible.

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91 AUG 13 AM 11:44

Attachment 7
Page 1 of 1

PEOPLE FOR CARLOS LUCERO, INC.
2555 South Meade Street
Denver, Colorado 80219

August 8, 1991

Ms. Pat Sheppard
Federal Election Commission
Washington, D.C. 20463

Re: Identification Number C00237867.

Dear Ms. Sheppard:

This is to follow up our telephone conversation of this morning. We have received the Commission's requests for additional information and clarification concerning reports filed by the Committee. We are presently compiling the information requested and intend to submit the information to the Commission promptly.

We will keep you advised of our progress and will contact you if we have any additional questions.

Sincerely,
Carolyn E. Daniels
Carolyn E. Daniels

92040900805

RECEIVED
F.E.C.
SECRETARIAT

91 SEP 12 AM 11:09

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

RAD Referral #91L-79
Staff Member: Richard Denholm

SOURCE: INTERNALLY GENERATED

RESPONDENTS: People for Carlos Lucero, Inc. and
Carolyn E. Daniels, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(a)(6)
11 C.F.R. § 104.5(f)

INTERNAL REPORTS
CHECKED: Referral Materials
Committee Reports

FEDERAL AGENCIES
CHECKED: None

I. GENERATION OF MATTER

The Reports Analysis Division ("RAD") referred the People for Carlos Lucero, Inc. Committee (the "Committee") and Carolyn E. Daniels, as treasurer, to the Office of the General Counsel on August 23, 1991, for failure to file a forty-eight hour notification ("48 Hour Notices") for one (1) loan guarantee totaling \$35,000 by the candidate. Attachment 1. Carlos F. Lucero was a candidate in the 1990 primary election for the U.S. Senate from Colorado.

II. FACTUAL AND LEGAL ANALYSIS

For the Factual and Legal Analysis, see Attachment 2.

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III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

92040900807

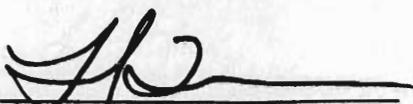
IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe the People for Carlos Lucero, Inc. and Carolyn E. Daniels, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) and enter into conciliation prior to a finding of probable cause to believe.

3. Approve the attached Factual and Legal Analysis and proposed conciliation agreement.
4. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

9/11/91
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments

1. Referral Materials
2. Factual and Legal Analysis
3. Proposed Conciliation Agreement

Staff Member: Richard Denholm

92040900808

BEFORE THE FEDERAL ELECTION COMMISSION

(MUR 3424)

In the Matter of)
People for Carlos Lucero, Inc. and) RAD Referral #91L-79
Carolyn E. Daniels, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 16, 1991, the Commission decided by a vote of 5-0 to take the following actions in RAD Referral #91L-79:

1. Open a MUR.
2. Find reason to believe the People for Carlos Lucero, Inc. and Carolyn E. Daniels, as treasurer, violated 2 U.S.C. § 434(a)(6) (A) and enter into conciliation prior to a finding of probable cause to believe.
3. Approve the Factual and Legal Analysis and proposed conciliation agreement, as recommended in the General Counsel's Report dated September 11, 1991.
4. Approve the appropriate letter, as recommended in the General Counsel's Report dated September 11, 1991.

Commissioners Aikens, Elliott, Josefiak, McGarry, and Thomas voted affirmatively for the decision; Commissioner McDonald did not cast a vote.

Attest:

9-16-91
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., Sept. 12, 1991 11:09 a.m.
Circulated to the Commission: Thurs., Sept. 12, 1991 4:00 p.m.
Deadline for vote: Mon., Sept. 16, 1991 4:00 p.m.

92040900809



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

September 23, 1991

Carolyn E. Daniels, Treasurer
People For Carlos Lucero, Inc.
2555 S. Meade Street
Denver, CO 80219

RE: MUR 3424
People for Carlos Lucero,
Inc. and Carolyn E. Daniels,
as treasurer

Dear Ms. Daniels:

On September 16, 1991, the Federal Election Commission found that there is reason to believe the People for Carlos Lucero, Inc. and you, as treasurer, violated 2 U.S.C. § 434(a)(6)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

92040900810

Carolyn E. Daniels, Treasurer
Page 2

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Richard Denholm, the staff member assigned to this matter, at (202) 219-3690.

Sincerely,


John Warren McGarry
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

9 2 0 4 0 9 0 0 8 1 1

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: People for Carlos Lucero, Inc.
and Carolyn E. Daniels,
as treasurer

MUR: 3424

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires principal campaign committees of candidates for federal office to notify the Clerk of the House of Representatives, the Secretary of the Senate, or the Federal Election Commission (as appropriate) and the Secretary of State, in writing, of each contribution totaling \$1,000 or more received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires the notification to be made within 48 hours after receipt of the contribution and to include the name of the candidate and the office sought by the candidate, the identification of the contributor, the date of receipt and the amount of the contribution. Id. Notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B).

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The Act defines contribution as including any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i). While loans in the ordinary course of business and in accordance with applicable law by certain financial institutions are not considered contributions by the financial institution, each endorser or guarantor of the loan is considered to have made a contribution in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. See 2 U.S.C. § 431(8)(B)(vii)(I). In addition, the Regulations define a loan as including a guarantee, endorsement or any other form of security. 11 C.F.R. § 100.7(a)(1)(i).

People for Carlos Lucero, Inc. is the authorized principal campaign committee of Carlos F. Lucero, a candidate for the U.S. Senate from Colorado in the 1990 primary election. Carolyn E. Daniels is the treasurer of the Committee.

Prior to the August 14, 1990 primary election, a notice dated July 9, 1990, was sent to Respondents informing them of upcoming committee report filing deadlines. This notice stated that the Committee must file special notices for contributions of \$1,000 or more received during the period of July 26, 1990 through August 11, 1990, within 48 hours of the Committee's receipt of such contributions.

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The Committee received one (1) loan guarantee from the candidate during the time period that required a 48 Hour Notification. The loan guarantee was received by the Committee as follows:

<u>Contributor</u>	<u>Date Received</u>	<u>Amount</u>
Carlos F. Lucero	08/07/90	\$35,000

The Committee did not file a 48 Hour Notice for the above contribution and the Commission was not informed of this last minute contribution until October 15, 1990, when the Committee filed its October 1990 Quarterly Report.

Therefore, there is reason to believe that the People for Carlos Lucero, Inc. Committee and Carolyn E. Daniels, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

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ARNOLD & PORTER

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NEW YORK, NEW YORK 10022-3219
(212) 750-5050

RICHARD P. BARKLEY
DIRECT LINE: (303) 863-2328

TELECOPIER: (303) 832-0428

October 10, 1991

Via Federal Express

Mr. Richard Denholm
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3424, People for Carlos Lucero, Inc. and
Carolyn E. Daniels, as Treasurer

Dear Mr. Denholm:

I am writing this letter on behalf of Carolyn E. Daniels and People for Carlos Lucero, Inc. (the "Committee"),¹ in response to Chairman John McGarry's letter, dated September 23, 1991, to Carolyn E. Daniels, Treasurer, People for Carlos Lucero, Inc. (the "FEC letter").² The FEC letter states that "there is reason to believe" that the Committee and Ms. Daniels, as treasurer for the Committee, have violated 2 U.S.C. § 434(a)(6)(A) of the Federal Campaign Act, which provides that contributions of \$1000 or more received less than 20 days before an election must be reported to the Federal Election Commission (the "FEC") within 48 hours of their receipt.

¹ A Statement of Designation of Counsel, designating me as counsel for Ms. Daniels and the Committee, is attached hereto as Exhibit A.

² Ms. Daniels received the FEC letter on October 2, 1991.

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OFFICE OF GENERAL COUNSEL

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Mr. Richard Denholm
October 10, 1991
Page 2

The "Contribution" At Issue

According to the FEC letter, and the underlying documents, the "contribution" at issue is a "loan guarantee"³ by the candidate, Carlos F. Lucero, received by the Committee on August 7, 1990, and reported on October 15, 1990, when the Committee filed its October 15, 1990 Quarterly Report.

Relevant Factual or Legal Materials

The FEC letter states that Ms. Daniels and the Committee "have an opportunity to demonstrate that no action should be taken against" them, and that they may "submit any factual or legal materials that . . . are relevant to the Commission's consideration of this matter. FEC letter at 1. The remainder of this letter sets forth such factual and legal material.

A. The Loan Guarantee Was Not Reported Because It Was Not a "Contribution"

Section 434(a)(6)(A) of the Federal Election Campaign Act of 1971 (the "Act"), provides that when "any contribution of \$1,000 or more [is] received by any authorized committee . . . after the 20th day, but more than 48 hours before, any election," the committee

³ At the outset, it is unclear whether the \$35,000 "contribution" is properly classified as a "loan guarantee." The bank loan at issue was made to the candidate, not to the Committee; thus it is unclear whether the candidate guaranteed the loan to the Committee or actually lent the money to the Committee.

Because of the confusion over the proper classification of the \$35,000, this letter addresses the \$35,000 both as a "loan guarantee" by the candidate and as a loan from him.

92040900816

Mr. Richard Denholm
October 10, 1991
Page 3

"shall notify" the FEC (and other entities) of the contribution "within 48 hours after" its receipt (emphasis added). Thus, assuming the \$35,000 was a loan guarantee, it was subject to the reporting requirements of § 434(a)(6)(A) only if it was a "contribution." According to the FEC's regulations it was not.

The word "contribution," is defined in 11 C.F.R. § 100.7(a)(1) as "[a] gift, subscription, loan (except for a loan made in accordance with 11 C.F.R. 100.7(b)(11)),⁴ advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office" (Emphasis added). Section § 100.7(a)(1)(i) states that "[f]or purposes of 11 CFR 100.7(a)(1), the term 'loan' includes a guarantee, endorsement, and any other form of security." 11 C.F.R. § 100.7(a)(1)(i) (emphasis added). Thus, when §§ 100.7(a)(1) and 100.7(a)(1)(i) are read together, the plain meaning of the regulations is that a loan, a loan guarantee, or a loan endorsement is a contribution except where such loan, loan guarantee or loan endorsement is made in accordance with 11 C.F.R. § 100.7(b)(11).

In the present case, it is undisputed that the loan guarantee was made in accordance with applicable banking laws and regulations and in the ordinary course of business. See Affidavit of Carlos F. Lucero, attached hereto as Exhibit B. Accordingly, it did not constitute a contribution as defined in the regulations, and was not subject to the 48-hour reporting requirements.

B. According to the FEC's Campaign Guide, a Loan By a Candidate Is Not a Contribution

Moreover, if the \$35,000 was actually a loan from the candidate to the Committee, and not a loan guarantee, it still should not be considered a "contribution."

⁴ 11 C.F.R. § 100.7(b)(11) provides that a loan is not a contribution if it is "made in accordance with applicable banking laws and regulations and is made in the ordinary course of business."

92040900817

Mr. Richard Denholm
October 10, 1991
Page 4

The Campaign Guide for Congressional Candidates and Committees strongly indicates that loans from the candidate are not contributions. That publication states:

Personal funds donated to the campaign are reported as contributions from the candidate.

* * * *

Personal funds loaned to the campaign are reported as loans from the candidate from the outset. This is necessary if the candidate wishes to be repaid; funds reported as contributions from the candidate may not later be converted into loans.

Federal Election Commission, Campaign Guide for Congressional Candidates and Committees at 10 (July 1988).

The Campaign Guide, in other words, clearly distinguishes between donations from a candidate and loans from the candidate. A "donation" from a candidate is a "contribution" and must be reported as such. A "loan" from the candidate, however, is a "loan," and cannot be reported as a contribution. Indeed, according to the Campaign Guide, if a loan is reported as a contribution, the candidate cannot be repaid for the loan.

The position taken by the FEC, therefore, creates an unavoidable "catch-22." If the loan from the candidate is reported as a contribution pursuant to Section 434(a)(6)(A), the loan cannot be repaid; if it is not reported as a contribution (as the Campaign Guide suggests it should not be), the FEC asserts that the Committee and the treasurer have violated Section 434(a)(6)(A).

Moreover, this "catch-22" is particularly pernicious in that the Committee and its treasurer had no way of knowing the FEC's present position -- that the loan was a "contribution" and was subject to the 48-hour reporting requirements -- and thus choosing to comply with the FEC's current interpretation of the Act. At the time the loan was made, the loan was correctly reported according to the Campaign Guide. The Committee

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Mr. Richard Denholm
October 10, 1991
Page 5

and Ms. Daniels were unaware of the FEC's current, inconsistent position until they received the FEC letter, almost a year after the loan was first reported.

C. The Committee and Ms. Daniels
Used Their Best Efforts to
Comply With the Act

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Finally, 2 U.S.C. § 432 and 11 C.F.R. § 104.7(a) provide that "[w]hen the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act." Although neither the Act nor the regulations defines the term "best efforts," it can hardly be denied that the Committee and Ms. Daniels used their best efforts here. The regulations and the Campaign Guide⁵ indicate that, regardless whether the \$35,000 is treated as a loan or a loan guarantee, it was not a contribution, and thus was not subject to the 48-hour reporting requirements set forth 2 U.S.C. § 434. Any inadvertent failure to comply with the Act under these circumstances, therefore, is understandable and excusable.⁶

In sum, both the Commission's regulations and the Campaign Guide indicate that the \$35,000 at issue here was not a contribution. Accordingly, the fact that it was not reported within 48 hours after its receipt was not a violation of 2 U.S.C. § 434. Alternatively, because the Committee and Ms. Daniels relied upon language in the regulations and the Campaign Guide that

⁵ Indeed, because the Campaign Guide "was written to help U.S. House and Senate campaigns comply with the Federal Election Campaign Act and Commission regulations," Campaign Guide at 1, reliance on that document by Ms. Daniels and the Committee clearly constitute their "best efforts" to submit the information required by the Act.

⁶ Indeed, the campaign did comply with section 434(a)(6)(A) in reporting a \$1,000 contribution that was made within 20 days of the primary election.

ARNOLD & PORTER

**Mr. Richard Denholm
October 10, 1991
Page 6**

indicated that the \$35,000 at issue was not a contribution, the failure to report it pursuant to 2 U.S.C. § 434(a)(6)(A) was an inadvertent, and excusable, mistake, and the Committee and Ms. Daniels used their "best efforts" to submit the information required by the Act. In either case, the current action should be dismissed.

* * * *

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ARNOLD & PORTER

Mr. Richard Denholm
October 10, 1991
Page 7

I am hopeful that an agreement can be reached that would not impugn the characters of Ms. Daniels, the Committee or Mr. Lucero. I would propose that you and I keep the channels of communication open and attempt to resolve this matter to the mutual satisfaction of both our clients.

Thank you for your consideration. Please do not hesitate to call me if you have any questions.

Sincerely,



Richard Barkley

Attachments

92040900821

STATEMENT OF DESIGNATION OF COUNSEL

(A)

MUR 3424

NAME OF COUNSEL: Richard Barkley

ADDRESS: Arnold & Porter

1700 Lincoln Street, Ste. 4000

Denver, Colorado 80203

TELEPHONE: (303) 863-1000

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/3/91
Date

Carolyn E Daniels
Signature

RESPONDENT'S NAME: CAROLYN E. DANIELS

ADDRESS: 701 S. CORONA

DENVER, CO 80209

HOME PHONE: 303-722-3447

BUSINESS PHONE: 303-866-3208

92040900822

3

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
People for Carlos Lucero, Inc.)	MUR 3424
and Carolyn E. Daniels, as)	
treasurer)	

AFFIDAVIT OF CARLOS F. LUCERO

CARLOS F. LUCERO, duly sworn upon oath, deposes and says:

1. I make this affidavit on the basis of my personal knowledge and belief in response to Chairman John McGarry's letter, dated September 23, 1991, to Carolyn E. Daniels, Treasurer, People for Carlos Lucero, Inc.

2. In 1990, I was a candidate for the office of United States Senator from the State of Colorado. People for Carlos Lucero, Inc. (the "Committee") was the authorized campaign committee for my congressional campaign.

3. On August 6, 1990, I obtained a personal loan of \$35,000 from the First National Bank in Alamosa, Colorado (the "bank"). The loan was made in accordance with applicable banking laws and regulations, and was made in the ordinary course of business.

92040900823

PARCEL, MAURO, HULTIN & SPAANSTRA, P. C.

ATTORNEYS AT LAW
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TELEPHONE (303) 292-6400
TELECOPIER (303) 295-3040

RICHARD P. BARKLEY

DIRECT DIAL
(303) 297-4555

February 25, 1992

VIA FEDERAL EXPRESS

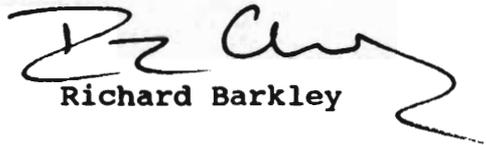
Mr. Richard Denholm
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Conciliation Agreement in In the Matter of
People for Carlos Lucero, Inc. and Carolyn E.
Daniels, as Treasurer, MUR 3424

Dear Mr. Denholm:

As set forth in my letter dated February 12, 1992, I am returning within two working days of receipt two copies of the Conciliation Agreement, signed by me, in In the Matter of People for Carlos Lucero, Inc. and Carolyn E. Daniels, as Treasurer, MUR 3424. In addition, enclosed are two copies of the letter that will accompany the Agreement.

Sincerely,


Richard Barkley

Enclosure

92040900825

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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of
People for Carlos Lucero, Inc.
and Carolyn E. Daniels,
as treasurer

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MUR 3424

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

The Commission originally found reason to believe that the People for Carlos Lucero, Inc. and Carolyn Daniels, as treasurer, ("Respondents") violated 2 U.S.C. § 434(a)(6)(A) and decided to enter into preprobable cause conciliation. After extensive negotiations, Respondents submitted their most recent proposed conciliation agreement on February 25, 1992. For the reasons set forth below, this Office recommends that the Commission accept the proposed conciliation agreement.

Attached is the proposed conciliation agreement, signed by Richard Barkley, counsel for Respondents. Attachment 1. A check for the civil penalty has not yet been received. Counsel also submitted a statement to be placed on the public record along with the conciliation agreement. Attachment 2.

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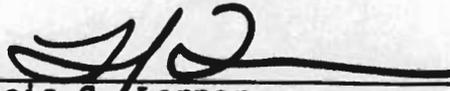
Therefore, based on the foregoing, this Office recommends that the Commission accept the attached agreement with the People for Carlos Lucero, Inc. and Carolyn E. Daniels, as treasurer.

III. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the People for Carlos Lucero, Inc. and Carolyn E. Daniels, as treasurer.
2. Approve the appropriate letter.
3. Close the file.

Lawrence M. Noble
General Counsel

3-16-92
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments

1. Proposed conciliation agreement
2. Letter and Statement by Richard Barkley

Staff Assigned: Richard Denholm

92040900829

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
People for Carlos Lucero, Inc.) NUR 3424
and Carolyn E. Daniels,)
as treasurer)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the People for Carlos Lucero, Inc. and Carolyn E. Daniels, as treasurer ("Respondents"), violated 2 U.S.C. § 434(a)(6)(A).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

ATTACHMENT 1
Page 1 of 5

92040900830

IV. The pertinent facts in this matter are as follows:

1. Mr. Carlos F. Lucero, was a candidate for the U.S. Senate from Colorado. People for Carlos Lucero, Inc. is the authorized principal campaign committee for Mr. Lucero's congressional campaign. See 2 U.S.C. § 431(5).

2. Ms. Carolyn E. Daniels is the treasurer of the People for Carlos Lucero, Inc.

3. The Federal Election Campaign Act of 1971, as amended (the "Act"), requires principal campaign committees of candidates for Federal office to notify either the Clerk of the House, Secretary of the Senate or the Commission (as appropriate) and the Secretary of State, in writing, of each contribution totaling \$1,000 or more received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires this notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and the office sought by the candidate, identification of the contributor, the date of receipt and the amount of the contribution. Id.

4. Timely disclosure of these contributions, pursuant to 2 U.S.C. § 434(a)(6)(A), is in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B).

92040900831

ATTACHMENT 1
Page 2 of 5

5. Pursuant to 2 U.S.C. § 431(8)(A), a "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i).

6. The term "loan" is defined in 11 C.F.R. § 100.7(a)(1)(i) as including a guarantee, endorsement and any other form of security.

7. Loans in the ordinary course of business and in accordance with applicable law by certain financial institutions are not considered contributions by the financial institution.

8. Each endorser or guarantor of the loan is considered to have made a contribution in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. See 2 U.S.C. § 431(8)(B)(vii)(I).

9. The Act further defines a "person" to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. § 431(11).

10. Pursuant to 2 U.S.C. § 434(a)(6)(A), respondents were required to notify the Clerk of the House, Secretary of the Senate or the Commission (as appropriate) and the Secretary of State, in writing, of all contributions of \$1,000 or more received from July 26, 1990 through August 11, 1990 within 48 hours of receipt.

92040900832

ATTACHMENT 1
Page 3 of 5

11. During the period of July 26, 1990 to August 11, 1990, Respondents received one (1) loan guarantee totaling \$35,000 from Carlos F. Lucero on August 7, 1990, which was disclosed by Respondents on the October 1990 Quarterly Report.

V. Respondents failed to file a 48 Hour Notice for the loan guarantee no later than August 9, 1990 in violation of 2 U.S.C. § 434(a)(6)(A). Respondents contend that their violation was not knowing and willful.

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Seven Hundred and Fifty Dollars (\$750), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

92040900833

ATTACHMENT 1
Page 4 of 5

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY:

Lois G. Lerner
Associate General Counsel

Date

FOR THE RESPONDENTS:


Name
Position

2/25/92
Date

92040900834

ATTACHMENT 1
Page 5 of 5

Denholm

PARCEL, MAURO, HULTIN & SPAANSTRA, P. C.

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RICHARD P. BARKLEY

DIRECT DIAL
(303) 297-4555

February 25, 1992

VIA FEDERAL EXPRESS

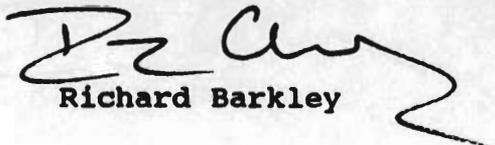
Mr. Richard Denholm
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Conciliation Agreement in In the Matter of
People for Carlos Lucero, Inc. and Carolyn E.
Daniels, as Treasurer, MUR 3424

Dear Mr. Denholm:

As set forth in my letter dated February 12, 1992, I am returning within two working days of receipt two copies of the Conciliation Agreement, signed by me, in In the Matter of People for Carlos Lucero, Inc. and Carolyn E. Daniels, as Treasurer, MUR 3424. In addition, enclosed are two copies of the letter that will accompany the Agreement.

Sincerely,


Richard Barkley

Enclosure

92FEB26 AM 10:51

92FEB25 PM 3:43

92040900835

ATTACHMENT 2
Page 1 of 7

Denholm

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RICHARD P. BARKLEY

DIRECT DIAL
(303) 297-4555

February 25, 1992

VIA FEDERAL EXPRESS

Mr. Richard Denholm
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

92FEB 26 PM 4: 07

RECEIVED
FEDERAL ELECTION COMMISSION

Re: Conciliation Agreement in In the Matter of
People for Carlos Lucero, Inc. and Carolyn E.
Daniels, as Treasurer, MUR 3424

Dear Mr. Denholm:

As I informed you in my letter of February 12, 1992, my clients, the respondents in the above-captioned case, have agreed to enter into a Conciliation Agreement (the "agreement") with the Federal Election Commission (the "FEC") based upon your representation that they will be allowed to submit a letter which will be appended to the Conciliation Agreement setting forth their position on the loan guarantee. See Letter dated February 12, 1992, from Richard Barkley to Mr. Richard Denholm at 1-2. This is the letter my clients are submitting.

Introduction

Respondents have entered into the Conciliation Agreement on the basis that the \$750 civil penalty imposed by the FEC does not justify the expenses, including legal fees, travel and accommodation costs, and other expenses, that would be required to litigate this case. As explained below, the FEC has never found that respondents in fact violated the Federal Campaign Act (the "Act"), and respondents emphatically and categorically deny that they ever did so, even in the minor way alleged by the FEC here.

The Loan Guarantee

On August 7, 1990, the Committee received a \$35,000 loan guarantee from the candidate. The loan guarantee was reported by the Committee on October 15, 1990, when it filed its October 15, 1990 Quarterly Report. It is undisputed that the loan guarantee

ATTACHMENT 2
Page 2 of 7

92040900836

PARCEL, MAURO, HULTIN & SPAANSTRA, P. C.

Mr. Richard Denholm
Office of the General Counsel
Federal Election Commission
Page 2
February 25, 1992

was legal and in accordance with Federal Election law, and the FEC has never alleged or implied either that the loan guarantee was improper, or that the candidate acted improperly by providing it to the Committee or in any other way. It is likewise undisputed that the underlying loan was made in accordance with applicable banking laws and regulations and in the ordinary course of business.

The 48-Hour Reporting Requirement for Contributions

In September 1991 the FEC notified respondents that in the FEC's opinion there was "reason to believe" that the respondents violated 2 U.S.C. § 434(a)(6)(A) of the Act. That section is a reporting provision. It requires that "contributions" of \$1,000 or more received less than 20 days before an election must be reported by the campaign to the FEC within 48 hours of their receipt.

It is undisputed that the Committee complied with section 434(a)(6)(A) in reporting within 48 hours all donations of \$1,000 or more received by it. So why was the loan guarantee not also reported within 48 hours of receipt? The reason is simple: according to the FEC's regulations and its Campaign Guide, the loan guarantee was not a "contribution," and thus was not subject to the 48-hour reporting requirement.

A. The Loan Guarantee Was Not Reported Because It Was Not a "Contribution"

Section 434(a)(6)(A) of the Federal Election Campaign Act of 1971 (the "Act"), provides that when "any contribution of \$1,000 or more [is] received by any authorized committee . . . after the 20th day, but more than 48 hours before, any election," the committee "shall notify" the FEC (and other entities) of the contribution "within 48 hours after" its receipt (emphasis added). Thus, the \$35,000 loan guarantee was subject to the reporting requirements of § 434(a)(6)(A) only if it was a "contribution." According to the FEC's regulations it was not.

The word "contribution" is defined in 11 C.F.R. § 100.7(a)(1) as "[a] gift, subscription, loan (except for a loan

ATTACHMENT 2
Page 3 of 7

92040900837

PARCEL, MAURO, HULTIN & SPAANSTRA, P. C.

Mr. Richard Denholm
Office of the General Counsel
Federal Election Commission
Page 3
February 25, 1992

made in accordance with 11 C.F.R. § 100.7(b)(11)),¹ advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office" (Emphasis added.) Section 100.7(a)(1)(i) states that "[f]or purposes of 11 C.F.R. § 100.7(a)(1), the term 'loan' includes a guarantee, endorsement, and any other form of security." 11 C.F.R. § 100.7(a)(1)(i) (emphasis added). Thus, when sections 100.7(a)(1) and 100.7(a)(1)(i) are read together, the plain meaning of the regulations is that a loan, a loan guarantee, or a loan endorsement is a contribution except where such loan, loan guarantee or loan endorsement is made in accordance with 11 C.F.R. § 100.7(b)(11).

In the present case, it is undisputed that the loan guarantee was made in accordance with 11 C.F.R. § 100.7(b)(11), that is, it was made in accordance with applicable banking laws and regulations and in the ordinary course of business. Accordingly, it did not constitute a contribution as defined in the regulations, and was not subject to the 48-hour reporting requirements.

B. According to the FEC's Campaign Guide, a Loan By a Candidate Is Not a Contribution

Moreover, the Campaign Guide for Congressional Candidates and Committees demonstrates that loans from the candidate are not contributions. That publication states:

Personal funds donated to the campaign are reported as contributions from the candidate.

* * * *

Personal funds loaned to the campaign are reported as loans from the candidate from the outset. This is necessary if the candidate wishes to be repaid; funds reported as contributions from the candidate may not later be converted into loans.

¹ 11 C.F.R. § 100.7(b)(11) provides that a loan is not a contribution if it is "made in accordance with applicable banking laws and regulations and is made in the ordinary course of business."

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PARCEL, MAURO, HULTIN & SPAANSTRA, P. C.

Mr. Richard Denholm
Office of the General Counsel
Federal Election Commission
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February 25, 1992

Federal Election Commission, Campaign Guide for Congressional Candidates and Committees at 10 (July 1988) (emphasis added).

The Campaign Guide, in other words, clearly distinguishes between donations from a candidate and loans from the candidate. A "donation" from a candidate is a "contribution" and must be reported as such. A "loan" from the candidate, however, is a "loan," and cannot be reported as a contribution. In fact, according to the Campaign Guide, if a loan is reported as a contribution, the candidate cannot be repaid for the loan.

Despite this clear direction from the FEC's Campaign Guide, the FEC now takes the position that the loan guaratee should have been reported within 48 hours of receipt. The FEC's insupportable position, however, creates a "catch-22" for unsuspecting candidates. If the loan guaratee from the candidate had been reported as a contribution pursuant to Section 434(a)(6)(A), as the FEC now insists it should have been, the loan could not have been repaid by the Committee. If, as happened here, the loan guaratee were not reported as a contribution (as the Campaign Guide suggests it should not be), the FEC now asserts that the respondents have violated Section 434(a)(6)(A).

Moreover, this "catch-22" is particularly pernicious in that respondents had no way of knowing the FEC's present position and thus choosing to comply with the FEC's current interpretation of the Act. At the time the loan was made, the loan was correctly reported according to the Campaign Guide. Respondents were unaware of the FEC's current, inconsistent position until they received a letter from the FEC almost a year after the loan was first reported.²

It would be comforting if the FEC has demonstrated some way out of this paradox, but unfortunately it has not. When these issues were raised to the FEC, they declined to explain, clarify, or even respond substantively.

² The FEC has stated that the violation alleged here is the most common type of violation of the Act. Despite this, the FEC has made no effort to revise its regulations or the Campaign Guide to clarify its position and to assist candidates in complying with the FEC's interpretation of the Act.

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C. The Committee and Ms. Daniels Used Their Best Efforts to Comply With the Act

2 U.S.C. § 432 and 11 C.F.R. § 104.7(a) provide that "[w]hen the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act." It can hardly be denied that respondents used their best efforts here. The regulations and the Campaign Guide³ indicate that the loan guarantee was not a contribution, and thus was not subject to the 48-hour reporting requirements set forth in 2 U.S.C. § 434. Any inadvertent failure to comply with the Act under these circumstances, therefore, is understandable and excusable.

When this point was raised to the FEC, however, it took the position -- despite the clear statutory and regulatory language to the contrary -- that there was no justification for not strictly complying with the 48-hour reporting requirements of the Act. This strict liability stance is insupportable because it reads the "best efforts" provision out of the Act.

The Reasons for Not Litigating the Matter

Despite the fact that the FEC's position is inconsistent with the Act, the implementing regulations, and the Campaign Guide published by the FEC, respondents have chosen to enter into the Conciliation Agreement rather than litigate this matter. The reason for this decision is that the procedures established for litigating allegations such as this one are so burdensome that the cost of litigation greatly exceeds the value of respondents proving their now-academic point. In order to vindicate themselves, respondents would have to pay legal fees, travel and accommodation costs, and other expenses for an attorney to represent them at a trial which would take place in Washington, D.C. It makes little sense to incur these costs, which almost

³ Because the Campaign Guide "was written to help U.S. House and Senate campaigns comply with the Federal Election Campaign Act and Commission regulations," Campaign Guide at 1, reliance on that document by respondents clearly constitutes their "best efforts" to submit the information required by the Act.

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Mr. Richard Denholm
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certainly would exceed several thousand dollars, to avoid a \$750 penalty.

Conclusion

Both the Commission's regulations and the Campaign Guide indicate that the \$35,000 loan guarantee at issue here was not a contribution, and thus, the fact that it was not reported within 48 hours after its receipt was not a violation of 2 U.S.C. § 434. In addition, because respondents relied upon language in the regulations and the Campaign Guide that indicated that the \$35,000 at issue was not a contribution, any purported failure to report it pursuant to 2 U.S.C. § 434(a)(6)(A) was an inadvertent, and excusable, mistake, and respondents used their "best efforts" to submit the information required by the Act. Accordingly, respondents categorically deny any allegation that they in any way violated the Federal Campaign Act.

Sincerely,


Richard Barkley

92040900841

ATTACHMENT 2
Page 7 of 7



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /DONNA ROACH *DR*
COMMISSION SECRETARY

DATE: MARCH 19, 1992

SUBJECT: MUR 3424 - GENERAL COUNSEL'S REPORT
DATED MARCH 16, 1992

The above-captioned document was circulated to the Commission on TUESDAY, MARCH 17, 1992 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

- Commissioner Aikens _____
- Commissioner Elliott _____
- Commissioner McDonald XXX
- Commissioner McGarry _____
- Commissioner Potter _____
- Commissioner Thomas _____

This matter will be placed on the meeting agenda for WEDNESDAY, MARCH 25, 1992.

Please notify us who will represent your Division before the Commission on this matter.

92040900842

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3424
People for Carlos Lucero, Inc.)
and Carolyn E. Daniels, as)
treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 25, 1992, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3424:

1. Accept the conciliation agreement with the People for Carlos Lucero, Inc. and Carolyn E. Daniels, as treasurer, as recommended in the General Counsel's report dated March 16, 1992.
2. Approve the appropriate letter as recommended in the General Counsel's report dated March 16, 1992.
3. Close the file.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

3/26/92
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

92040900843



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 6, 1992

CLOSED

Mr. Richard P. Barkley, Esq.
Parcel, Mauro, Multin, & Spaanstra, P.C.
Suite 3600
1801 California Street
Denver, Colorado 80202-2636

RE: MUR 3424
People for Carlos
Lucero, Inc. and
Carolyn E. Daniels, as
treasurer

Dear Mr. Barkley:

On March 25, 1992, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 434(a)(6)(A), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Richard M. Denholm II

Richard M. Denholm II
Attorney

Enclosure
Conciliation Agreement

92040900844

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
People for Carlos Lucero, Inc.) MUR 3424
and Carolyn E. Daniels,)
as treasurer)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the People for Carlos Lucero, Inc. and Carolyn E. Daniels, as treasurer ("Respondents"), violated 2 U.S.C. § 434(a)(6)(A).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

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IV. The pertinent facts in this matter are as follows:

1. Mr. Carlos F. Lucero, was a candidate for the U.S. Senate from Colorado. People for Carlos Lucero, Inc. is the authorized principal campaign committee for Mr. Lucero's congressional campaign. See 2 U.S.C. § 431(5).

2. Ms. Carolyn E. Daniels is the treasurer of the People for Carlos Lucero, Inc.

3. The Federal Election Campaign Act of 1971, as amended (the "Act"), requires principal campaign committees of candidates for Federal office to notify either the Clerk of the House, Secretary of the Senate or the Commission (as appropriate) and the Secretary of State, in writing, of each contribution totaling \$1,000 or more received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires this notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and the office sought by the candidate, identification of the contributor, the date of receipt and the amount of the contribution. Id.

4. Timely disclosure of these contributions, pursuant to 2 U.S.C. § 434(a)(6)(A), is in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B).

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5. Pursuant to 2 U.S.C. § 431(8)(A), a "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i).

6. The term "loan" is defined in 11 C.F.R. § 100.7(a)(1)(i) as including a guarantee, endorsement and any other form of security.

7. Loans in the ordinary course of business and in accordance with applicable law by certain financial institutions are not considered contributions by the financial institution.

8. Each endorser or guarantor of the loan is considered to have made a contribution in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. See 2 U.S.C. § 431(8)(B)(vii)(I).

9. The Act further defines a "person" to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. § 431(11).

10. Pursuant to 2 U.S.C. § 434(a)(6)(A), respondents were required to notify the Clerk of the House, Secretary of the Senate or the Commission (as appropriate) and the Secretary of State, in writing, of all contributions of \$1,000 or more received from July 26, 1990 through August 11, 1990 within 48 hours of receipt.

92040900847

11. During the period of July 26, 1990 to August 11, 1990, Respondents received one (1) loan guarantee totaling \$35,000 from Carlos F. Lucero on August 7, 1990, which was disclosed by Respondents on the October 1990 Quarterly Report.

V. Respondents failed to file a 48 Hour Notice for the loan guarantee no later than August 9, 1990 in violation of 2 U.S.C. § 434(a)(6)(A). Respondents contend that their violation was not knowing and willful.

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Seven Hundred and Fifty Dollars (\$750), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

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VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

4/7/92
Date

FOR THE RESPONDENTS:


Name
Position

2/25/92
Date

92040900849



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3424

DATE FILMED 4/29/92 CAMERA NO. 2

CAMERAMAN S.E.G.

92040900850



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3424.

6/10/92

92040910122

701 SOUTH CORONA
DENVER, COLORADO 80209

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3424
People for Carlos Lucero, Inc.
and Carolyn E. Daniels, as treasurer

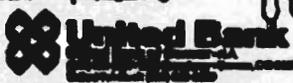
Dear Sir or Madam:

Enclosed is a check in the amount of \$750.00 pursuant to the
conciliation agreement in connection with the above-referenced matter.

Very truly yours,

Carolyn E. Daniels
Carolyn E. Daniels

92040910123

CAROLYN E. DANIELS 00-77 701 SOUTH CORONA DENVER, CO 80209		5687
		28 April 1992
PAY TO THE ORDER OF <u>Federal Election Commission</u>		\$ 750.00
<u>Seven hundred - fifty and 00/100</u>		DOLLARS
 United Bank		
FOR <u>Carolyn E. Daniels</u>		

CLOSED

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

May 11 1 07 PM '92

**701 SOUTH CORONA
DENVER, COLORADO 80209**

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

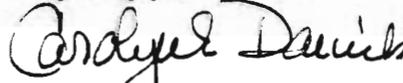
Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3424
People for Carlos Lucero, Inc.
and Carolyn E. Daniels, as treasurer

Dear Sir or Madam:

Enclosed is a check (number 5694) in the amount of \$750.00 pursuant to the conciliation agreement in connection with the above-referenced matter.

Very truly yours,



Carolyn E. Daniels

92040910124

71000
OGC 4680
copy



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 11, 1992

52 MAY 12 PM 3:10

TWO WAY MEMORANDUM

TO: Virginia Whitted
OGC, Docket

FROM: Philomena Brooks *PB*
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from Carole E. Daniels, check number 30940, dated May 6, 1992, and in the amount of \$ 750.00. Attached is a copy of the check and any correspondence that was forwarded. Please indicate below the account into which it should be deposited, and the MUR number and name.

TO: Philomena Brooks
Accounting Technician

FROM: Virginia Whitted
OGC, Docket

In reference to the above check in the amount of \$ 750.00, the MUR number is 3424 and in the name of PEOPLE FOR CARLOS LUCERO. The account into which it should be deposited is indicated below:

- Budget Clearing Account (OGC), 95F3875.16
- Civil Penalties Account, 95-1099.160
- Other: _____

Virginia Whitted
Signature

May 12, 1992
Date

92040910125

CAROLYN E. DANIELS 03-77
701 SOUTH CORONA
DENVER, CO 80209

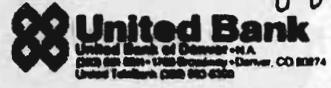
5694

23-7/1020

6 May 1992

PAY TO THE ORDER OF Federal Election Commission \$ 750.⁰⁰

Seven hundred - fifty and ⁰⁰/₁₀₀ DOLLARS



FOR Carolyn E. Daniels

9