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COUNSEL

**BEFORE THE
FEDERAL ELECTION COMMISSION**

Nevada State Democratic Party
Sam Lieberman, Chair
1210 South Valley View Blvd, Suite 114
Las Vegas, NV 89102,

Complainant,

v.

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

MUR # 6295

Carl Giudici

Reno, NV 89523,

Respondents.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Sue Lowden and Carl Giudici 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.

According to a recent article published by the *Las Vegas Sun*, Lowden has been promoting her campaign by touring the state in a luxury recreational bus, which contains a kitchen, shower, and bed. *Las Vegas Sun*, 5/17/2010 (attached as "Attachment A"). The campaign paid \$6,800 to paint the campaign logo, a picture of Lowden, and other campaign graphics on the vehicle. According to Lowden's attorney, on days when Lowden is not using the

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luxury bus to tour the state, "it sits at headquarters as a roadside billboard for the Lowden campaign." *Id.*

According to the *Sun*, the bus was provided to Lowden by Respondent Carl Giudici, a campaign donor. The precise arrangement between Lowden and Giudici is unclear, however. According to a public database of vehicle registrations, Giudici purchased the luxury bus in May 2009. According to the *Sun*, when she was initially asked about the luxury bus, Lowden said that a supporter had donated it to her. According to the Nevada DMV, Lowden is listed as a title-holder, suggesting that Giudici and Lowden are co-owners of the vehicle.

However, in response to inquiries from the *Sun*, the Lowden campaign changed its story. According to Lowden's campaign attorney, the luxury bus is titled to Giudici, and not Lowden. Instead, the attorney stated that the campaign is leasing the luxury bus from Giudici. The campaign provided a redacted lease agreement to the *Sun*, which, though redacted, seems to indicate that the lease is for a period of 10 months.¹ See Attachment B. However, Lowden's attorney told the *Sun* that it only paid Giudici for the days that the campaign drives the vehicle, and not the days when it sits at campaign headquarters acting as a "roadside billboard." *Sun*, 5/17/10.

Regardless of how the transaction between Giudici and Lowden was structured, the full value of the transaction has not been reported to the Federal Election Commission. According to Commission records, on November 18, 2009, the Lowden campaign reported receiving in-kind contributions of \$2,200 from Giudici, and \$1,885 from Giudici's wife, for "vehicle rental."² Commission records also show a disbursement of \$9,496.86 to a Reno RV dealer for vehicle

¹ The lease is redacted to read "The term of this Agreement shall be for a period of Ten (10)." The only logical inference is that the term is for 10 months. It was clearly not for 10 days, as the Lowden campaign has continued to use the vehicle well past January 22, 2010.

² Both contributions were designated for the 2010 primary election. In addition, on August 24, 2009, Giudici made a \$200 monetary contribution to the Lowden campaign, also designated for the primary.

repairs; according to Lowden's attorney, the campaign planned to pay Giudici in-kind for the rental in part by making "capital improvements" to the vehicle.

These reported payments do not add up to the fair market value of the luxury bus.

According to the *Sun*, a luxury bus like the one used by Lowden would cost over \$100,000 to purchase. And according to Lowden's own attorney, a typical rental rate could be \$475 a day (or \$3,325 a week); though, on information and belief, complainant believes that the fair market rental value could be as much as \$4,500 per week.

B. LEGAL ANALYSIS

1. Giudici has made, and Lowden has received, an excessive contribution.

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). It is illegal for any individual to contribute, and for any candidate to receive, contributions to candidates in excess of \$2,400 per election. *Id.* § 441a(a)(1).³

The Act defines "contribution" broadly, 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). Under Commission rules, "the provision of goods or services without charge or at a charge that is less than the usual and normal charge . . . is a contribution." 11 C.F.R. § 100.52(d). The "usual and normal charge" for goods is the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. *Id.*

Under the facts presented in the *Sun* article and Lowden's FEC reports, it is clear that Giudici made, and Lowden received, an excessive contribution. According to Lowden's own

³ The Nevada primary election will be held on June 8, 2010. A candidate committee may not receive an in-kind contribution for any election other than the immediately pending one. See 11 C.F.R. §§ 102.9(e), 104.13(a).

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attorney, Lowden is currently leasing the vehicle from Giudici, and a "typical" rental rate for a comparable luxury RV would be \$475 per day. Further, a copy of the redacted lease provided by the Lowden campaign to the *Las Vegas Sun*, dated January 12, 2010 indicates that the lease is for a term of ten months. Thus, by Lowden's own admission, the value of the lease is worth at least \$142,500 (\$475 per day x 10 months x 30 days per month) – and, on information and believe, the fair market value to rent the vehicle may even be higher. This value is well in excess of Giudici's \$2,400 contribution limit to Lowden for the primary election.

Furthermore, Giudici and his wife already reported making in-kind contributions to Lowden in the form of vehicle rental in November 2009, two months before the lease was signed. If Lowden was using the vehicle in November 2009 or earlier, the value of the in-kind may be even higher.

Lowden's attorney has offered various shifting explanations for Lowden's treatment of the contribution, but none are convincing. Lowden's attorney told the *Sun* that the Lowden campaign was only paying fair market value for the luxury bus for the days on which they actually drove the vehicle. But this explanation falls flat. First, the campaign stated that on days when the vehicle is not driven, it "sits at headquarters as a roadside billboard for the Lowden campaign." Thus, even when Lowden is not driving the vehicle, her campaign is still getting the benefit of the vehicle. Second, the campaign painted its logo on the vehicle, and keeps it at its headquarters. By every indication, the campaign has complete control over the use of the vehicle. And because the vehicle has the Lowden logo on it, Giudici cannot lease the vehicle to others. To obtain a similar arrangement on the open market, the Lowden campaign would have to pay rent for the entire 10 month period it is using the vehicle, not just for the days it chooses to drive the vehicle.

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Lowden's counsel also told the *Sun* that it planned to pay Giudici for the rental in part by making "capital improvements" to the vehicle. So far, the campaign has purported to make "capital improvements" worth \$9,496.86 to the vehicle. However, there is no evidence that this arrangement was bargained for between the two parties. And even if these "capital improvements" are valid bargained-for consideration, they still fall well short of the fair market value of the lease.

Thus, it is clear that Giudici has made, and Lowden has received an excessive contribution.⁴

2. Lowden failed to report in-kind 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, Lowden received an in-kind contribution from Giudici with a value of at least \$142,500. Yet her FEC reports only disclose a fraction of that transaction. It shows \$4,085 in in-kind contributions for vehicle rental from Giudici and his wife, and a \$9,496.86 disbursement to an RV dealer for repairs. Even if the Lowden campaign can permissibly pay for its lease by making "capital improvements" to the vehicle, the total reported value of the transaction has only been \$13,581.96 – well under the fair market value of the rental. Thus, Lowden has violated the Act by failing to report the full value of the in-kind contributions from Giudici to her campaign.

C. REQUESTED ACTION

For the reasons described above, we respectfully urge the Commission to investigate whether Respondents have violated FECA by making and accepting massive in-kind

⁴ The *Sun* article alleges, and Lowden denies, that Lowden is named on the title to the vehicle. If Giudici purchased the vehicle and then gave half of the ownership interest in the vehicle to Lowden, that too would have been an excessive in-kind contribution to Lowden.

contributions, well in excess of the federal limits. We further request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,

Sam Ziehm

SUBSCRIBED AND SWORN to before me this 19th day of May, 2010.

Beverly W. Moore
Notary Public

My Commission Expires:

Jan 25, 2011



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Attachment A

Las Vegas Sun

Danny Tarkanian: Sue Lowden breaking campaign law by accepting donated RV

By **J. Patrick Coolican (contact)**

Published Monday, May 17, 2010 | 3:15 p.m.

Updated Monday, May 17, 2010 | 10:47 p.m.

Sue Lowden, a leading Republican contender to challenge Sen. Harry Reid, is being accused by a chief competitor of breaking campaign finance law for accepting a luxury campaign bus as a campaign contribution.

A campaign contributor is "leasing" to Lowden the RV she is using as her campaign bus, according to her campaign. But Lowden's name is on the title along with the name of the supporter, Carl Giudici, seemingly indicating they co-own the bus.

Campaign finance rules allow in-kind contributions of \$2,400 — equal to the cash limit. The contribution of a luxury RV, which commonly costs more than \$100,000, would be a violation of the law.

Danny Tarkanian, who narrowly trails Lowden according to polling of the Republican U.S. Senate primary field, has called into question whether Lowden is breaking the law.

"Like a typical insider, Sue Lowden doesn't think the rules apply to her," said Brian Seitchik, a Tarkanian spokesman, who referred to the bus as a "free ride."

The tan 2001 Monaco, complete with kitchen, shower and bed, was bought by Giudici, a former casino owner, in May 2009 from a Montana dealer, according to a public database of vehicle registrations.

A few months later, Lowden entered the race and became the front-runner, a status assured in part by the big bus that the campaign had wrapped in a colorful advertisement for her.

In a recent TV appearance, Lowden said a supporter had donated it to her.

For Lowden, the controversy arose at a bad time, just days before early voting and after a rough several weeks in which her lead in public polls has eroded sharply. She only recently had tried to put behind her provocative remarks in which she defended the idea of bartering — trading goods and services — as a way for people to obtain health care.

Lowden specifically mentioned trading chickens or house painting services for health care; the idea was openly mocked by humorists and politicians alike.

The campaign has offered shifting explanations for the bus's ownership.

Charles Spies, an attorney for the campaign, wrote in an e-mail last week: "The RV is titled in its owner's name (not Sue Lowden or Lowden for Senate)."

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In response to a records request, however, the DMV confirmed that Lowden is a titleholder with Giudici, indicating co-ownership status.

Later, the Lowden attorney sent a follow-up e-mail: "Although (Lowden) is not the owner of the vehicle (but instead is using it through a private lease agreement), (Lowden) and the owner are on the registration for insurance purposes."

By law, from the start of the campaign last year until the June 8 primary, Lowden may accept no more than \$2,400 in free use of the vehicle from Giudici, who gave a \$2,200 in-kind vehicle donation last year; he gave another \$200, meaning he is at his limit.

Elsie Giudici has given at least \$2,360 in in-kind vehicle donations since last year, meaning she is also near if not at her limit.

Spies said Lowden is in full compliance with campaign law.

He said the campaign is paying Giudici fair-market value on the days they actually drive the vehicle, though not on the days when it sits at headquarters as a roadside billboard for the Lowden campaign. Later, the Lowden campaign said it is in fact paying fair-market value for days when it sits in the parking lot, but declined to give a dollar amount.

The lowest-priced Monaco model last week on the website privatemotorhomeportal.com was available for \$400 a night. Spies said any consideration of fair-market value would have to include the Lowden model's decade of wear and tear.

The campaign paid to have it registered and wrapped in the Lowden banner.

The campaign also paid for significant maintenance, including one disbursement of \$9,496.86 to a Reno RV dealer. The campaign is calling this maintenance "capital improvements" to the vehicle, thus entitling Lowden to more use of the RV as compensation for the money spent on repairs.

Given the \$2,400 that Carl and Elsie Giudici can each give, plus the maintenance credit, the campaign could use the bus for 30 days, assuming \$475 per day, a typical rate for a used, luxury RV.

Campaign finance disclosure reports show the campaign paid nearly \$6,800 to a Las Vegas company that specializes in vehicle signs, \$1,624 for vehicle registration and significant outlays for gasoline.

Melanie Sloan, a former prosecutor and now executive director of Citizens for Responsibility and Ethics in Washington, took a dim view of the transaction. She said a bus donation would be a clear campaign finance violation.

"He gave it to her. She owns it. She's on the title, and it's in her custody and control. It's an excessive campaign contribution," she said.

The Lowden campaign said the lease agreement states that Lowden in no way owns the vehicle, and that the Giudicis are in fact the owners. A copy of part of the lease agreement provided to the Sun states Sue Lowden for U.S. Senate acknowledges that Carl Giudici owns the vehicle.

"The lease agreement supersedes any implication drawn from the title or registration," Spies said. "From an FEC's (Federal Election Commission) legal perspective, the key point is that she is paying fair-market value for use of the vehicle."

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Desert Beacon: Lowden's Magical Mystery Bus (Tue, May 18, 2010 3:19 PM)

The Washington Monthly (Tue, May 18, 2010 2:20 PM)

Sue Lowden Breaking Campaign Law by Accepting Donated RV (Tue, May 18, 2010 1:48 PM)

POLITICAL HOT TOPICS: Tuesday, May 18, 2010 (Tue, May 18, 2010 8:53 AM)

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Attachment B