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OFFICE OF GENERAL
COUNSEL

GENERAL
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1022

February 16, 2016

Mr. Mathew Peterson
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Mr. Goodman:

By this letter, I would like to file a formal complaint against Flores for Congress and Bernie Sanders for President. Lucy Flores is a candidate for the Democratic nomination for United States House of Representatives for the Fourth District of Nevada. Bernie Sanders is a candidate for the Democratic nomination for President of the United States. The Bernie Sanders for President campaign has produced an advertisement which is running in the Fourth Congressional District of Nevada that features Ms. Flores.

The advertisement, for which a transcript is attached as Exhibit A (a video of the ad can be found at https://www.youtube.com/watch?v=B6G4T_3vDew), it is clear that the Sanders campaign has provided a platform for Lucy Flores to promote her own campaign. The advertisement, paid for by Bernie Sanders for President, appears to be an endorsement advertisement in which Ms. Flores is endorsing Mr. Sanders' campaign. However, the ad is, in reality, a campaign advertisement for Ms. Flores. Rather than discussing any particular reason for or merits of her endorsement for Mr. Flores, the ad is really a thinly veiled biographical advertisement for Mr. Flores herself. To be sure, more than half of the advertisement is about Ms. Flores' personal background. In addition, it is never explained in the advertisement how this personal background connects to any endorsement to Mr. Sanders. Therefore, it is clear that this ad was really intended to provide a platform for Ms. Flores to introduce her own personal story in the advertisement.

Based upon the above, the advertisement is a "coordinated communication" and the value of the advertisement must be considered an in-kind contribution by the Sanders campaign to Lucy Flores' campaign for Congress. The advertisement meets the three part "coordinated communication" test as set forth in the Commission's regulations at 11

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C.F.R. § 109.21. The ad clearly meets the first (payment) and third (conduct) prongs of the Commission's coordination test based upon the fact that the ad was paid for by a third party and Ms. Flores appears directly in the advertisement. The ad meets the Commission's content prong since the ad is the "functional equivalent of express advocacy." 11 C.F.R. § 109.21(b)(5) since, based upon the fact that the majority of the ad is a biographical ad for Ms. Flores, it is not susceptible to any other reasonable interpretation other than an appeal to vote for her. In addition, the advertisement does not qualify for the safe harbor for endorsements since the ad clearly "promotes" Ms. Flores. 11 C.F.R. § 109.21(g)(1).

In addition, the ad does not comply with the Stand By Your Ad provisions of the Bipartisan Campaign Act. Under the BCRA, both candidates are required to state that they had paid for and/or approved the advertisement. The attached ad includes disclaimer compliance for only Bernie Sanders. Therefore, Lucy Flores and Flores for Congress have failed to provide the proper disclaimers required by law. See FEC Advisory Opinion 2004-1 and 11 C.F.R. § 110.11(b) & (c)(3):

It is our understanding and belief that the Sanders campaign has put considerable resources behind this advertisement. Thus, a large portion of the costs of production and dissemination of this advertisement should be considered an excessive contribution from the Sanders campaign to the Flores campaign. Ms. Flores use of the Sanders campaign to promote her own campaign is an egregious violation of federal campaign finance laws and has provided her with an unfair advantage in a closely contested congressional primary.

We request that the FEC act quickly find that a violation of the Act has occurred and provide for injunctive relief and levy the appropriate financial penalties against the Sanders and Flores campaigns for this excessive campaign contribution and failure to properly provide notice that Lucy Flores has approved the advertisement.

Sincerely,



David Chase
Campaign Manager
Ruben Kihuen for Congress

SWORN TO AND SUBSCRIBED before me this 16th day of February, 2016

Notary

Delores D. Ansley
2-16-16

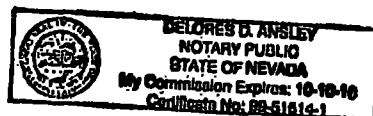


Exhibit A

Lucy Flores: I was raised by my father. My mother left my family when I was 10 years old. Things really went from bad to worse for me. This isn't just about numbers; this is about real lives. This is a system that isn't working for the everyday person. That's one of the reasons why I decided to endorse Bernie Sanders. Nevadans are looking for people who are willing to think big, to be bold and to fight for everyday people and that's exactly what Bernie Sanders is doing.

Bernie Sanders: I am Bernie Sanders and I approved this message

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