

FEDERAL ELECTION COMMISSION  
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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6772  
DATE COMPLAINT FILED: January 10, 2014  
DATE OF NOTIFICATION: January 16, 2014  
RESPONSES RECEIVED: February 6, 2014  
March 7, 2014  
DATE OF ACTIVATION: April 15, 2014

ELECTION CYCLE: 2012  
EXPIRATION OF SOL: Earliest: December 2016  
Latest: November 2017

COMPLAINANT:

Government Accountability Institute

RESPONDENTS:

Obama for America and Martin H. Nesbitt  
in his official capacity as treasurer

Obama Victory Fund and Andrew Tobias  
in his official capacity as treasurer

Obama Victory Fund 2012 and Taryn Vogel  
in her official capacity as treasurer

Robert Roche

Wicked Global

Derek Dorr

Unknown Persons

RELEVANT STATUTES  
AND REGULATIONS:

2 U.S.C. § 431(8)  
2 U.S.C. § 434(b)  
2 U.S.C. § 441a(a)(1)(A)  
2 U.S.C. § 441a(a)(f)  
2 U.S.C. § 441e(a)  
11 C.F.R. § 100.52(d)(1)  
11 C.F.R. § 100.94  
11 C.F.R. § 100.155  
11 C.F.R. § 110.20

110024100-1110

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

1 I. INTRODUCTION

2 This matter involves allegations that during the 2012 election cycle President Barack  
3 Obama's principal campaign committee<sup>1</sup> and two joint fundraising committees in which it was a  
4 participant<sup>2</sup> accepted and failed to disclose an excessive in-kind contribution in the form of  
5 services provided via the website www.obama.com, and improperly solicited and accepted  
6 prohibited contributions from foreign nationals. Compl. at 22-23 (Jan. 10, 2014); 2 U.S.C.  
7 §§ 441a(f), 434(b), 441e(a)(2). The Complaint further alleges that Robert Roche, Wicked  
8 Global, Derrick Dorr, and Unknown Persons — the owners and administrators of  
9 www.obama.com — made excessive in-kind contributions to the Obama Campaign Committees  
10 and solicited contributions from foreign nationals by using the www.obama.com website to drive  
11 foreign traffic to OFA's donation page. Compl. at 22-23; 2 U.S.C. §§ 441a(a)(1)(A), 441e(a)(2).  
12 The Complaint alleges that all of these violations were knowing and willful. *Id.*

13 Respondents OFA, Roche, Wicked Global, and Dorr filed a joint Response denying the  
14 allegations.<sup>3</sup> Resp. (Mar. 7, 2014). They assert that Roche was an uncompensated volunteer

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<sup>1</sup> Obama's principal campaign committee is Obama for America and Martin H. Nesbitt in his official capacity as treasurer ("OFA").

<sup>2</sup> The joint fundraising committees are Obama Victory Fund and Andrew Tobias in his official capacity as treasurer ("OVF 2008") and Obama Victory Fund 2012 and Taryn Vogel in her official capacity as treasurer ("OVF 2012"). Ann Marie Habershaw was named in the Complaint in her official capacity as Treasurer of OVF 2012; because she was subsequently replaced by current Treasurer Taryn Vogel, this Report references only Ms. Vogel. See OVF 2012 Statement of Organization (Aug. 27, 2013). OFA, OVF 2008 and OVF 2012 are referred herein collectively as the "Obama Campaign Committees."

<sup>3</sup> The separate letter submitted jointly by OVF 2008 and OVF 2012 did not address the allegations in the Complaint, but simply noted that the Commission approved their termination requests on January 16, 2013 and September 19, 2013, respectively, prior to the filing of the Complaint in this matter, and therefore requested that the Commission remove them from this matter. OVF Letter (Feb. 6, 2014). OVF 2008 and OVF 2012 did not submit a designation of counsel or additional response to the allegations in the Complaint.

1 whose use of the domain name he personally owned, www.obama.com, to redirect traffic to  
2 www.barackobama.com did not constitute an excessive contribution to OFA because it is exempt  
3 from the Act's definition of contribution. Resp. at 1-3; see 11 C.F.R. §§ 100.94, 100.155.  
4 Additionally, Respondents contend that the allegations regarding the solicitation and receipt of  
5 contributions from foreign nationals are purely speculative, and that OFA's process for verifying  
6 the source of its contributions has been reviewed by the Commission on several occasions and  
7 that "without offering any new material facts, the Complaint makes substantially similar  
8 allegations to those presented in complaints that the FEC has already dismissed." *Id.* at 5; see  
9 Factual and Legal Analysis ("F&LA") at 6-8, MUR 6687 (Obama for America); F&LA at 14,  
10 MURs. 6078, 6090, 6108, 6139, 6142 and 6214 (Obama for America, *et al.*) (Sept. 7, 2010).

11 Because the Commission's implementing regulations exempt from the definition of  
12 contribution the volunteer internet activity at issue here and the Commission has previously  
13 assessed and concluded that there was not an adequate basis to find reason to believe that the  
14 Obama Campaign Committees violated the foreign national prohibitions based on materially  
15 indistinguishable allegations, we recommend that the Commission find no reason to believe  
16 Obama for America and Martin H. Nesbitt in his official capacity as treasurer, Obama Victory  
17 Fund and Andrew Tobias in his official capacity as treasurer, Obama Victory Fund 2012 and  
18 Taryn Vogel in her official capacity as treasurer, Robert Roche, Wicked Global, Derek Dorr and  
19 Unknown Persons violated 2 U.S.C §§ 441a(a)(1)(A), 441a(f), 441e(a)(2), and 434(b) by  
20 soliciting, accepting or receiving contributions from foreign nationals and failing to disclose such  
21 contributions.

1     **II.     FACTUAL BACKGROUND**

2             According to the Response, during the 2012 election cycle Robert Roche owned the  
3 Internet domain name, www.obama.com. Resp. at 2. Roche was a volunteer supporter of OFA  
4 and a member of the National Finance Committee who helped raise funds for OFA. *Id.* The  
5 Response represents that Roche was not at any time an employee or paid consultant of OFA, and  
6 any activities that he engaged in on behalf of OFA were done without compensation. *Id.*  
7 Wicked Global and Derrick Dorr, its founder, provided administrative hosting services for  
8 www.obama.com during the 2012 election cycle. *Id.*

9             The Complaint alleges that www.obama.com redirected its visitors to the “donate” page  
10 of OFA’s official campaign website, www.barackobama.com, and that this constitutes an  
11 excessive in-kind contribution from Roche, Wicked Global, Dorr and Unknown Respondents to  
12 the Obama Campaign Committees. Compl. at 22. The Complaint notes that Roche is an  
13 American citizen living abroad, that www.obama.com received 68% of its traffic from foreign  
14 countries during the 2012 election cycle, that “hundreds of links to www.obama.com” are  
15 embedded on websites with predominantly foreign traffic, and that the sole purpose of  
16 www.obama.com is to redirect web traffic to the donate page on www.barackobama.com. *Id.* at  
17 9, 12-13, 16, 26.

18             The Complaint asserts that Roche purchased the website address on September 19, 2008,  
19 from an individual unrelated to the campaign. *Id.* at 9. Complainant alleges that “the value of  
20 the website is undeniable,” and states that online appraisal and valuation sites estimate its value  
21 between \$27,000 and over \$1 million.<sup>4</sup> *Id.* at 9-10. The Complaint notes further that OFA owns  
22 392 domain names related to the Obama campaign, suggesting that such domain names are of

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<sup>4</sup> The record contains no information as to the amount Roche is purported to have paid for the website address.

1 value to the campaign, and that the www.obama.com domain name would have had value during  
2 the last few weeks of the 2008 campaign and the years preceding the 2012 election campaign.

3 *Id.*

4 The Complaint contends that Roche, Wicked Global, Dorr and Unknown Respondents  
5 created and maintained www.obama.com for the sole purpose of redirecting visitors to OFA's  
6 donation page, "effectively driving what was known to be primarily foreign traffic to the [Obama  
7 Campaign Committees'] donate page[s]." Compl. at 12, 22-23, 26. The Complaint further  
8 asserts that "[o]n sites throughout the Internet probable foreign nationals report being solicited  
9 for donations by the Obama Campaign." Compl. at 6.

10 The Complaint also alleges that the Obama Campaign Committees lack sufficient fraud  
11 prevention measures to prevent the solicitation and receipt of contributions from foreign  
12 nationals. *Id.* at 13-16. It cites the failure to use the Card Verification Value (CVV) to detect  
13 credit card contributions from impermissible sources. *Id.* at 14-15. Additionally, the Complaint  
14 alleges that despite having access to advanced technology, an unprecedented amount of  
15 identifying information on potential donors, and teams of specialists, the Obama Campaign  
16 Committees have made multiple solicitations to "probable foreign nationals" who signed up for  
17 their mailing list from "foreign soil," using a foreign IP address, and whose related data "would  
18 have confirmed the individual as a likely foreign national." *Id.* at 8.

19 Respondents OFA, Roche, Wicked Global, and Dorr address the allegations in the  
20 Complaint in two parts. First, regarding Roche and the alleged excessive contribution,  
21 Respondents acknowledge that he did own the www.obama.com domain name during the 2012  
22 election cycle, but assert that he was an uncompensated volunteer and therefore, his activity

1 constituted uncompensated internet activity, which is exempt from the Act's definition of  
2 contribution. Resp. at 2-3; *see* 11 C.F.R. §§ 100.94 and 100.155.

3 Second, regarding the alleged solicitation and receipt of contributions from foreign  
4 nationals, Respondents contend that the allegations are purely speculative and set forth in detail  
5 OFA's process for verifying the source of its contributions. Resp. at 3-5. Respondents assert  
6 that www.obama.com was not used any differently than OFA's webpage with regard to foreign  
7 nationals, and that any visitors to www.obama.com were automatically directed to OFA's  
8 donation page and subjected to the same compliance and vetting procedures as visitors that  
9 originated with www.barackobama.com. *Id.* at 5.

10 The Response notes that its process is consistent with the practices recommended and  
11 approved by the Commission: (1) the online fundraising and landing page requires that any  
12 donor affirm that the funds being contributed were lawful and consistent with the Act's  
13 requirements when clicking the "donate" button to make a contribution; (2) before making a  
14 contribution donors are required to enter their full names, addresses, occupations and employers;  
15 and (3) all donors must affirm that they are U.S. citizens or lawfully permanent residents, if a  
16 donor lives abroad a separate webpage is generated which requires them to provide a valid U.S.  
17 passport number. Resp. at 4 (citing F&LA at 7, MUR 6687).<sup>5</sup> At regular intervals, OFA  
18 conducted automated searches of all contributions in its database to identify fraudulent or  
19 unlawful donations; this included automated searches of the donor database to identify  
20 contributions with foreign city, country names, or postal codes, non-U.S. email addresses and  
21 passport numbers that did not conform to U.S. standard passport numbers. *Id.* at 4-5.

<sup>5</sup> Correspondingly, any donor who made contributions in person at events held outside of the U.S. was required to provide a copy of a valid U.S. passport and submit a contribution form, confirming that they were U.S. citizens or lawful permanent residents of the U.S. Resp. at 4.

1           Additionally, OFA screened all online credit card contributions that originated from a  
2 foreign IP address, and if any questions arose regarding the donor's citizenship, OFA required  
3 that the donor provide a copy of a valid U.S. passport. *Id.* at 5. OFA refunded any contributions  
4 for which a valid U.S. passport could not be confirmed. *Id.*

5           Finally, Respondents note that the Complaint does not provide any evidence the Obama  
6 Campaign Committees, Roche, Wicked Global, Dorr and Unknown Persons knowingly solicited,  
7 accepted, or received contributions from foreign nationals, nor does the Complaint allege facts  
8 that would have lead a reasonable person to conclude that there was a substantial probability that  
9 the source of funds solicited, accepted, or received was a foreign national. Resp. at 5. The  
10 Respondents contend that the Complaint only speculates that the Obama Campaign Committees,  
11 Roche, Wicked Global, Dorr and Unknown Persons knowingly solicited, accepted, or received  
12 prohibited contributions from foreign nationals. *Id.* Respondents contend that the Complaint  
13 offers no new material facts, but makes substantially similar allegations to those the Commission  
14 has already dismissed in previous matters. *Id.*

15   **III. ANALYSIS**

16       **A. Alleged Excessive Contribution**

17           A contribution is any gift, subscription, loan, advance, or anything of value made by any  
18 person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(a)(1).  
19 Commission regulations define "anything of value" to include in-kind contributions, that is, the  
20 provision of goods or services without charge or at a charge that is less than the usual and normal  
21 charge. 11 C.F.R. § 100.52(d)(1).

22           The Federal Election Campaign Act of 1971, as amended (the "Act") provides that no  
23 person may make contributions to a candidate for federal office or his authorized political

1 committee in excess of certain prescribed limitations, and that a candidate or political committee  
2 may not knowingly accept contributions in violation of those limits. 2 U.S.C. § 441a(a)(1)(A),  
3 (f). For the 2008 and 2012 election cycles, the individual contribution limits were \$2,300 and  
4 \$2,500, respectively, for the primary and general elections. *See* [http://www.fec.gov/press/](http://www.fec.gov/press/press2007/20070123limits.html)  
5 [press2007/20070123limits.html](http://www.fec.gov/press/20110203newlimits.shtml); <http://www.fec.gov/press/20110203newlimits.shtml>.

6 Additionally, in 2008 and 2012 a joint fundraising committee established by a federal candidate  
7 and his national political party's federal account, such as OVF 2008 and OVF 2012, could accept  
8 up to \$30,800 and \$33,300 (the combined per-candidate and per-political party contribution  
9 limits), respectively, from each donor.<sup>6</sup> *Id.*; 11 C.F.R. § 102.17(a), (c)(5).

10 Under the Act, the value of services provided without compensation by any individual  
11 who volunteers on behalf of a candidate or political committee is specifically exempted from the  
12 definition of contribution. 2 U.S.C. § 431(8)(B)(i). The Commission's implementing  
13 regulations further provide that an individual's personal services and use of equipment or  
14 services in connection with uncompensated internet activity — whether undertaken  
15 independently or in coordination with any candidate, authorized committee, or political party  
16 committee — falls within the scope of the Act's volunteer services exemption. 11 C.F.R.  
17 §§ 100.94, 100.155; *see* Explanation and Justification for Rule on Internet Communications,  
18 71 Fed. Reg. 18,589, 18,604-05 (Apr. 12, 2006) ("E&J"). And "Internet activity" specifically  
19 includes "providing a hyperlink or other direct access to another person's Website," while  
20 "equipment and services" include "Internet domain names" and "Internet Service Providers."

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<sup>6</sup> The Act also permits a national political party to receive from individuals or persons other than a multicandidate committee up to \$28,500 and \$30,800 for the 2008 and 2012 election cycles, respectively. 2 U.S.C. § 441a(a)(1)(B).



1 11 C.F.R. §§ 100.94(b)-(c), 100.155(b)-(c). The exemption applies regardless of who owns the  
2 "equipment or service." *Id.* §§ 100.94(a)(2), 100.155(a)(2).

3 The information provided in the Complaint and Responses reflects that the domain name  
4 www.obama.com was not owned, controlled, or transferred to the Obama Campaign  
5 Committees; to the contrary, Roche allegedly owned, controlled, and used the domain name,  
6 albeit allegedly using it for the benefit of the Committees.<sup>7</sup> Compl. at 9; Resp. at 2. The  
7 Response further asserts that Roche was an uncompensated volunteer, and the Complaint does  
8 not allege Roche was compensated for his activities. Resp. at 1-2. The Commission's  
9 regulations exempt from the definition of contribution "equipment or service" for  
10 uncompensated internet activity, which specifically includes the use of an internet domain name  
11 or website to link to or provide direct access to another person's website. 11 C.F.R.  
12 §§ 100.94(b)-(c), 100.55(b)-(c); E&J at 18,604-05.

13 We therefore recommend that the Commission find no reason to believe that Obama for  
14 America and Martin H. Nesbitt in his official capacity as treasurer, Obama Victory Fund and  
15 Andrew Tobias in his official capacity as treasurer, Obama Victory Fund 2012 and Taryn Vogel  
16 in her official capacity as treasurer, Robert Roche, Wicked Global, Derek Dorr and Unknown  
17 Persons violated 2 U.S.C §§ 441a(a)(1)(A) and 441a(f) by making or accepting an excessive in-  
18 kind contribution. We also recommend that the Commission find no reason to believe that  
19 Obama for America and Martin H. Nesbitt in his official capacity as treasurer, Obama Victory

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<sup>7</sup> This matter is therefore distinguishable from other matters where the Commission considered an individual's transfer of a domain name to a committee or a committee's use of a domain name owned by another. See F&LA at 5-6, MUR 6425 (Ed Martin) (dismissing claim because the candidate, who was not subject to the Act's contribution limits, had a valid claim to use of the website); F&LA at 4-6, MUR 6474/6534 (Mandel) (finding no reason to believe domain name was transferred from state to federal committee at less than fair value); F&LA at 5-6, MUR 5965 (Fischer for U.S. Senate) (dismissing on *de minimis* grounds allegations that a candidate used eight domain names, one as the official campaign website, that were purchased and owned by his LLC specifically for his campaign).

1 Fund and Andrew Tobias in his official capacity as treasurer, and Obama Victory Fund 2012 and  
2 Taryn Vogel in her official capacity as treasurer, violated 2 U.S.C § 434(b) by failing to report an  
3 in-kind contribution.

4 **B. Alleged Prohibited Foreign Contributions**

5 The Act and Commission regulations prohibit a foreign national from making, either  
6 directly or indirectly, a contribution or donation in connection with an election, and prohibit a  
7 person from knowingly soliciting, accepting, or receiving a contribution or donation from a  
8 foreign national. 2 U.S.C. § 441e(a)(2); 11 C.F.R. § 110.20(b)-(c), (g). Even if a person lacks  
9 actual knowledge of the foreign national status of a potential contributor, that person will have  
10 “knowingly” accepted a prohibited foreign national contribution if he is aware of facts that  
11 would lead a reasonable person “to conclude that there is a substantial probability that the source  
12 of the funds solicited, accepted or received is a foreign national” or “to inquire whether the  
13 source of the funds . . . is a foreign national” without conducting such an inquiry. *Id.*  
14 § 110.20(a)(4)(ii)-(iii).

15 Here, the Complaint does not identify any contribution made by or received from a  
16 foreign national. Rather, the Complaint alleges Respondents solicited prohibited contributions  
17 from foreign nationals because the internet domain name [www.obama.com](http://www.obama.com) appeared on foreign  
18 websites or those frequented by foreign nationals and focuses on the Obama Campaign  
19 Committees’ alleged lack of adequate safeguards to prevent the potential receipt of contributions  
20 from foreign nationals who might link to the committees’ websites through [www.obama.com](http://www.obama.com).<sup>8</sup>  
21 Compl. at 13-16.

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<sup>8</sup> Although the Complaint alleges solicitation violations, it provides no basis to conclude that the Obama Campaign Committees or any agent of those committees solicited foreign national contributions. The mere

1 In its previous treatment of similar allegations regarding the Obama Campaign  
2 Committees' lack of adequate safeguards to prevent the receipt of contributions from foreign  
3 nationals, the Commission emphasized that a committee need make only a "reasonable inquiry"  
4 to verify that a contribution is not obtained from a prohibited source. F&LA at 14, MURs 6090,  
5 6108, 6139, 6142, 6214; F&LA at 7, MUR 6687. The Commission previously assessed and  
6 rejected similar allegations concerning the Obama Campaign Committees' failure to implement  
7 measures sufficient to detect and prevent contributions from foreign nationals during the 2012  
8 election cycle. *See* F&LA at 6-8, MUR 6687 (finding no reason to believe that OFA violated  
9 2 U.S.C. § 441e(a)(2) by accepting or receiving contributions from foreign nationals). The  
10 Complaint in this matter does not allege any new material facts suggesting a contrary result. To  
11 the extent that Internet traffic may have been directed to the Committees' Internet donation page  
12 from foreign websites, blogs, or servers, any contributions received would still have undergone  
13 the same review process that the Commission concluded was adequate in MURs 6687, 6090,  
14 6108, 6139, 6142, and 6214.

15 For these reasons, we recommend that the Commission find no reason to believe that the  
16 Obama Campaign Committees, Robert Roche, Wicked Global, Derek Dorr and Unknown  
17 Persons solicited, accepted, or received prohibited contributions from foreign nationals, in  
18 violation of 2 U.S.C. § 441e(a)(2).

19 **IV. RECOMMENDATIONS**

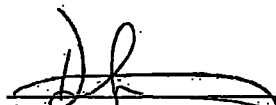
- 20 (1) Find no reason to believe Robert Roche, Wicked Global and Derek Dorr violated  
21 2 U.S.C. § 441a(a)(1)(A);  
22

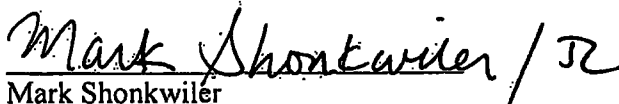
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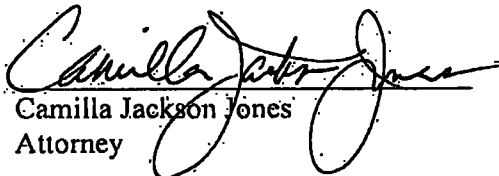
appearance of the domain name [www.obama.com](http://www.obama.com) on internet websites or blogs that are allegedly frequented by  
foreign nationals does not support a reasonable inference of such violations.

- 1 (2) Find no reason to believe Obama for America and Martin H. Nesbitt in his official  
2 capacity as treasurer, Obama Victory Fund and Andrew Tobias in his official  
3 capacity as treasurer, and Obama Victory Fund 2012 and Taryn Vogel in her  
4 official capacity as treasurer violated 2 U.S.C. § 441a(f);  
5  
6 (3) Find no reason to believe Obama for America and Martin H. Nesbitt in his official  
7 capacity as treasurer, Obama Victory Fund and Andrew Tobias in his official  
8 capacity as treasurer, Obama Victory Fund 2012 and Taryn Vogel in her official  
9 capacity as treasurer, Robert Roche, Wicked Global and Derek Dorr and  
10 Unknown Persons violated 2 U.S.C. § 441e(a)(2);  
11  
12 (4) Find no reason to believe that Obama for America and Martin H. Nesbitt in his  
13 official capacity as treasurer, Obama Victory Fund and Andrew Tobias in his  
14 official capacity as treasurer, Obama Victory Fund 2012 and Taryn Vogel in her  
15 official capacity as treasurer violated 2 U.S.C. § 434(b);  
16  
17 (5) Approve the attached Factual and Legal Analysis;  
18  
19 (6) Approve the appropriate letters; and  
20  
21 (7) Close the file.  
22  
23  
24  
25

26 7/9/14  
Date

  
Daniel A. Petalas  
Associate General Counsel  
For Enforcement

  
Mark Shonkwiler  
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Camilla Jackson Jones  
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