



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**Via First Class Mail and Facsimile (202) 654-9154**

Robert F. Bauer, Esq.  
Graham M. Wilson, Esq.  
Danielle E. Friedman, Esq.  
Perkins Coie  
700 13th Street, N.W.  
Suite 600  
Washington, DC 20005

**OCT - 7 2015**

Re: MUR 6772  
Obama for America and Martin 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<sup>1</sup>  
Robert Roche  
Derek Dorr  
Wicked Global

Dear Counselors:

On January 16, 2014, the Federal Election Commission ("Commission") notified your clients, Obama for America and Martin 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, Derek Dorr and Wicked Global that it received a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). On October 1, 2015, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe 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, Inc. and Derek Dorr, and Unknown Persons violated 2 U.S.C §§ 30116(a)(1)(A), 30116(f), 30121(a)(2), and 30104(b). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files,

<sup>1</sup> Taryn Vogel replaced Ann Marie Habersham as treasurer for the Obama Victory Fund 2012 after the Complaint was filed.

Robert F. Bauer, Esq.  
Graham M. Wilson, Esq.  
Danielle E. Friedman, Esq.  
MUR 6772  
Page 2 of 2

68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter at (202) 694-1650.

Sincerely,



Mark Shonkwiler  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

1001-1001-1001

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 **RESPONDENTS:** Obama for America and Martin H. Nesbitt **MUR: 6772**  
6 in his official capacity as treasurer

7  
8 Obama Victory Fund and Andrew Tobias  
9 in his official capacity as treasurer

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

12 Robert Roche  
13 Wicked Global, Inc.  
14 Derek Dorr  
15 Unknown Person

16  
17 **I. INTRODUCTION**

18 This matter involves allegations that during the 2012 election cycle President Barack Obama's principal campaign committee<sup>1</sup> and two joint fundraising committees in which it was a participant<sup>2</sup> accepted and failed to disclose an excessive in-kind contribution in the form of services provided via the website www.obama.com, and improperly solicited and accepted prohibited contributions from foreign nationals. Compl. at 22-23 (Jan. 10, 2014); 52 U.S.C. §§ 30116(f), 30104(b), 30121(a)(2). The Complaint further alleges that the owner, developers, and administrators of www.obama.com — Robert Roche, an Obama supporter, and Wicked Global, Inc. ("Wicked Global"), a web development company, Derrick Dorr, its founder, and Unknown Persons — made excessive in-kind contributions to the Obama Campaign Committees

<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."

1 and solicited contributions from foreign nationals by using the www.obama.com website to drive  
2 foreign traffic to OFA's donation page. Compl. at 22-23; 52 U.S.C. §§ 30116(a)(1)(A),  
3 30121(a)(2). The Complaint alleges that all of these violations were knowing and willful. *Id.*

4 Respondents OFA, Roche, Wicked Global, and Dorr filed a joint Response denying the  
5 allegations.<sup>3</sup> Resp. (Mar. 7, 2014). They assert that the internet activity at issue here by an  
6 uncompensated volunteer, whose use of the domain name he personally owned,  
7 www.obama.com, to redirect traffic to www.barackobama.com did not constitute an excessive  
8 contribution to OFA because it is exempt from the Act's definition of contribution. Resp. at 1-  
9 3; see 11 C.F.R. §§ 100.94, 100.155. Additionally, Respondents contend that the allegations  
10 regarding the solicitation and receipt of contributions from foreign nationals are purely  
11 speculative, and that OFA's process for verifying the source of its contributions has been  
12 reviewed by the Commission on several occasions and that "without offering any new material  
13 facts, the Complaint makes substantially similar allegations to those presented in complaints that  
14 the FEC has already dismissed." *Id.* at 5; see Factual and Legal Analysis ("F&LA") at 6-8,  
15 MUR 6687 (Obama for America); F&LA at 14, MURs 6078, 6090, 6108, 6139, 6142 and 6214  
16 (Obama for America, *et al.*) (Sept. 7, 2010).

17 Because the Commission's regulations exempt from the definition of contribution the  
18 volunteer internet activity at issue here and the Commission has previously assessed and  
19 concluded that there was not an adequate basis to find reason to believe that the Obama  
20 Campaign Committees violated the foreign national prohibitions based on materially  
21 indistinguishable allegations, the Commission found no reason to believe Obama for America

<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 and Martin H. Nesbitt in his official capacity as treasurer, Obama Victory Fund and Andrew  
2 Tobias in his official capacity as treasurer, Obama Victory Fund 2012 and Taryn Vogel in her  
3 official capacity as treasurer, Robert Roche, Wicked Global, Inc. and Derek Dorr, and Unknown  
4 Persons violated 52 U.S.C §§ 30116(a)(1)(A), 30116(f), 30121(a)(2), and 30104(b).

5 **II. FACTUAL BACKGROUND**

6 During the 2012 election cycle Robert Roche owned the internet domain name,  
7 www.obama.com. Resp. at 2. Roche was a volunteer supporter of OFA. *Id.* The Response  
8 represents that Roche was not at any time an employee or paid consultant of OFA, and any  
9 activities that he engaged in on behalf of OFA were done without compensation. *Id.* The  
10 Response further represents that Wicked Global and Derrick Dorr provided “minimal  
11 administrative hosting services” for www.obama.com during the 2012 election cycle. *Id.* at n.1.  
12 There is no available information indicating that Roche or Wicked Global or Dorr were  
13 compensated for their services.

14 The Complaint alleges that www.obama.com redirected its visitors to the “donate” page  
15 of OFA’s official campaign website, www.barackobama.com, and that this constitutes an  
16 excessive in-kind contribution from Roche, Wicked Global and Dorr, and Unknown  
17 Respondents to the Obama Campaign Committees. Compl. at 22. The Complaint asserts that  
18 Roche purchased the website address on September 19, 2008, from an individual unrelated to the  
19 campaign. *Id.* at 9. Complainant alleges that “the value of the website is undeniable,” and states  
20 that online appraisal and valuation sites estimate its value between \$27,000 and over \$1 million.<sup>4</sup>  
21 *Id.* at 9-10. The Complaint notes further that OFA owns 392 domain names related to the  
22 Obama campaign, suggesting that such domain names are of value to the campaign, and that the

---

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

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

3 The Complaint contends that Roche, Wicked Global and Dorr, and Unknown  
4 Respondents created and maintained www.obama.com for the sole purpose of redirecting visitors  
5 to OFA's donation page, "effectively driving what was known to be primarily foreign traffic to  
6 the [Obama Campaign Committees'] donate page[s]." Compl. at 12, 22-23, 26. The Complaint  
7 notes that Roche is an American citizen living abroad, that www.obama.com received 68% of its  
8 traffic from foreign countries during the 2012 election cycle, and that "hundreds of links to  
9 www.obama.com" are embedded on websites with predominantly foreign traffic. *Id.* at 9, 12-13,  
10 16. The Complaint further asserts that "[o]n sites throughout the Internet probable foreign  
11 nationals report being solicited for donations by the Obama Campaign." Compl. at 6.

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

20 The Response addresses the allegations in the Complaint in two parts. First, regarding  
21 Roche and the alleged excessive contribution, Respondents acknowledge that Roche did own the  
22 www.obama.com domain name during the 2012 election cycle, but assert that he was an  
23 uncompensated volunteer and therefore, his activity constituted uncompensated internet activity,

1 which is exempt from the Act's definition of contribution. Resp. at 2-3; *see* 11 C.F.R. §§ 100.94  
2 and 100.155. As to Wicked Global and Dorr, Respondents also represent that Wicked Global's  
3 and Dorr's role was limited to providing "minimal administrative hosting services" for the  
4 website. Resp. at 2 n.1.

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

12 The Response notes that its process is consistent with the practices recommended and  
13 approved by the Commission: (1) the online fundraising and landing page requires that any  
14 donor affirm that the funds being contributed were lawful and consistent with the Act's  
15 requirements when clicking the "donate" button to make a contribution; (2) before making a  
16 contribution donors are required to enter their full names, addresses, occupations and employers;  
17 and (3) all donors must affirm that they are U.S. citizens or lawfully permanent residents, if a  
18 donor lives abroad a separate webpage is generated which requires them to provide a valid U.S.  
19 passport number. Resp. at 4 (citing F&LA at 7, MUR 6687).<sup>5</sup> At regular intervals, OFA  
20 conducted automated searches of all contributions in its database to identify fraudulent or  
21 unlawful donations; this included automated searches of the donor database to identify

---

<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 United States. Resp. at 4.

1 contributions with foreign city, country names, or postal codes, non-U.S. email addresses and  
2 passport numbers that did not conform to U.S. standard passport numbers. *Id.* at 4-5.

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

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

17 **II. ANALYSIS**

18 **A. Alleged Excessive Contribution**

19 Under the circumstances presented, Respondents' activities related to the website  
20 www.obama.com are exempt from the Act's definitions of "contribution" and "expenditure." 11  
21 C.F.R. §§ 100.94, 100.155. Accordingly, the Commission found that there is no reason to  
22 believe that Obama for America and Martin H. Nesbitt in his official capacity as treasurer,  
23 Obama Victory Fund and Andrew Tobias in his official capacity as treasurer, Obama Victory



1 Fund 2012 and Taryn Vogel in her official capacity as treasurer, Robert Roche, Derek Dorr and  
2 Wicked Global, and Unknown Persons violated 52 U.S.C §§ 30116(a)(1)(A) and 30116(f) by  
3 making or accepting an excessive in-kind contribution. The Commission also found no reason to  
4 believe that Obama for America and Martin H. Nesbitt in his official capacity as treasurer,  
5 Obama Victory Fund and Andrew Tobias in his official capacity as treasurer, and Obama  
6 Victory Fund 2012 and Taryn Vogel in her official capacity as treasurer, violated 52 U.S.C  
7 § 30104(b) by failing to report an in-kind contribution.

8 **B. Alleged Prohibited Foreign Contributions**

9 The Act and Commission regulations prohibit a foreign national from making, either  
10 directly or indirectly, a contribution or donation in connection with an election, and prohibit a  
11 person from knowingly soliciting, accepting, or receiving a contribution or donation from a  
12 foreign national. 52 U.S.C. § 30121(a)(2); 11 C.F.R. §§ 110.20(b)-(c), (g). Even if a person  
13 lacks actual knowledge of the foreign national status of a potential contributor, that person will  
14 have “knowingly” accepted a prohibited foreign national contribution if he is aware of facts that  
15 would lead a reasonable person “to conclude that there is a substantial probability that the source  
16 of the funds solicited, accepted or received is a foreign national.” *Id.* § 110.20(a)(4)(ii). Further,  
17 if a person is aware of facts that would lead a reasonable person “to inquire whether the source of  
18 the funds . . . is a foreign national” and that person does not conduct a reasonable inquiry, the  
19 person will be found to have accepted a prohibited foreign national contribution. *-Id.*  
20 § 110.20(a)(4)(iii).

21 Here, the Complaint does not identify any contribution made by or received from a  
22 foreign national. Rather, the Complaint alleges Respondents solicited prohibited contributions  
23 from foreign nationals because the internet domain name www.obama.com appeared on foreign

1 websites or those frequented by foreign nationals and focuses on the Obama Campaign  
2 Committees' alleged lack of adequate safeguards to prevent the potential receipt of contributions  
3 from foreign nationals who might link to the committees' websites through www.obama.com.<sup>6</sup>  
4 Compl. at 13-16.

5 In its previous treatment of similar allegations that the Obama Campaign Committees'  
6 lacked adequate safeguards to prevent the receipt of contributions from foreign nationals, the  
7 Commission emphasized that a committee need make a "reasonable inquiry" to verify that a  
8 contribution is not obtained from a prohibited source (11 C.F.R. § 110.20(a)(7)) and that the  
9 Obama Campaign Committees' procedures satisfied that standard. F&LA at 14, MURs 6090,  
10 6108, 6139, 6142, 6214; F&LA at 7, MUR 6687. The Commission previously assessed and  
11 rejected similar allegations concerning the Obama Campaign Committees' failure to implement  
12 measures sufficient to detect and prevent contributions from foreign nationals during the 2012  
13 election cycle. See F&LA at 6-8, MUR 6687 (finding no reason to believe that OFA violated 52  
14 U.S.C. § 30121(a)(2) by accepting or receiving contributions from foreign nationals). The  
15 Complaint in this matter does not allege any new material facts suggesting a contrary result. To  
16 the extent that internet traffic may have been directed to the Committees' internet donation page  
17 from foreign websites, blogs, or servers, any contributions received would still have undergone  
18 the same review process that the Commission concluded was adequate in MURs 6687, 6090,  
19 6108, 6139, 6142, and 6214.

20 For these reasons, the Commission found no reason to believe that the Obama Campaign  
21 Committees, Robert Roche, Wicked Global, Derek Dorr and Unknown Persons solicited,

---

<sup>6</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 appearance of the domain name 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 accepted, or received prohibited contributions from foreign nationals, in violation of 52 U.S.C.
- 2 § 30121(a)(2).

1100142011