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March 31, 2008

Thomasenia P. Duncan, Esq.
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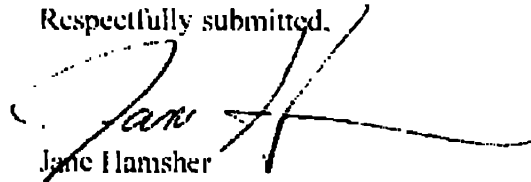
RE: Complaint Against Senator John McCain and John McCain 2008, Inc.

Dear Ms. Duncan:

On March 24, 2008 I filed a complaint with the Federal Election Commission against Senator John McCain and his 2008 presidential campaign.

Since then, over 31,000 people have added their names to the complaint. Please find them attached.

Respectfully submitted,


Jane Hamsher

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March 24, 2008

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Thomasenia P. Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, S.E.
Washington, D.C. 20463

Re: Complaint Against Senator John McCain and John McCain 2008, Inc.

Dear Ms. Duncan:

I am writing to file a complaint, in accordance with the Federal Election Commission's rules at 11 C.F.R. § 111.4, against Senator John McCain and his 2008 presidential campaign. Senator McCain is a candidate for the Republican Party nomination for President of the United States. My address is [redacted] Falls Church, Virginia 22044. The address for Senator McCain and his campaign committee, John McCain 2008, is P.O. Box 16118, Arlington, VA 22215.

Senator McCain and his campaign have violated the Federal Election Campaign Act by spending in excess of the Act's limits for the Presidential primary elections for candidates who have elected to receive public funds in the form of "matching funds" from the Presidential Election Campaign Fund, which consists of money that is designated by American taxpayers to be supplied to candidates who agree to abide by spending limits and other restrictions in exchange for these taxpayer funds.

On August 13, 2007, Senator McCain applied for matching funds from the Commission in exchange for an agreement to abide by an overall, as well as state-by-state, spending limits in connection with the 2008 primary elections. This spending limit covers all expenditures by these candidates through the primary election season through the date of nomination by the Republican Party of its candidate for President at the Republican National Convention in September 2008. 11 C.F.R. § 9032.6(a).

The spending limit for the primary elections for President for those who agree to receive public funding was originally set at \$10,000,000. 2 U.S.C. § 441a(b)(A). This amount is indexed for inflation. Thus, the limit for the 2008 election cycle is \$42,050,000. In addition to this base limit, the Federal Election Commission ("FEC")

has provided an additional 20% increase to the spending limit for fundraising costs (11 C.F.R. § 100.152), and an additional 15% increase for legal and compliance costs (11 C.F.R. § 9035.1(c)). Therefore, the effective spending limit for the 2008 primary election cycle is \$56,757,500.

On February 6, 2008, Senator McCain sent a letter to the FEC announcing his unilateral intent to withdraw from his binding agreement to participate in the primary public funding program, and thus, to abide by the primary spending limits. In response, the FEC, through its Chairman, sent a letter to Senator McCain on February 19, 2008, notifying him he could not withdraw from the program unless the FEC actually votes to allow him to do that. The FEC has not taken any such vote and presumably cannot do so as long as it lacks enough Commissioners to take formal action.

Senator McCain has simply announced his unilateral plan to ignore the spending limits that he agreed to, in writing, in August 2007.

Senator McCain's attempt to withdraw from the matching fund program appears to be rooted in a previous Advisory Opinion of the FEC provided to then Congressman Richard Gephardt in 2003. FEC Advisory Opinion 2003-35. In that Advisory Opinion, the Commission held that as a matter of policy, the Commission would grant such consent "to withdraw a certification of a candidate's eligibility to receive Matching Payment Act funds prior to the payment date for any such funds to such candidate or his or her committee upon receipt of a written request signed by the candidate, *provided that the certification of funds has not been pledged as security for private financing.*" *Id.* at 4 (emphasis added).

As documented in extensive detail by the Democratic National Committee ("DNC") in its complaint to the FEC on February 25, 2008 (a copy of the complaint can be found at http://www.democrats.org/a/2008/02/democratic_part_8.php), Senator McCain did, in fact, obligate matching funds as security for private financing for a \$4,000,000 line of credit from Fidelity & Trust Bank. Therefore, even if the FEC could consider Senator McCain's request to withdraw from the matching fund program, that request would not be granted because he pledge the certification of funds as security for a loan to his campaign.

At the time that the DNC filed its complaint, it was not yet clear whether Senator McCain had, in fact, violated the spending limit based upon disclosure reports that covered the period through January 31, 2008. On that report, Senator McCain had already spent approximately \$49,600,000.

Now, though, it's clear that the McCain Campaign has violated the spending cap. On March 20, 2008, Senator McCain's campaign filed its March Monthly report covering the period from February 1, 2008 through February 29, 2008. That report disclosed that Senator McCain's campaign has, as of February 29, 2008, in fact, exceeded the

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\$56,757,500 spending limit. As of February 29, 2008, Senator McCain has disclosed spending \$56,916,682 in connection with his quest for the Republican Presidential nomination (A copy of the relevant pages of Senator McCain's report is attached to this complaint). Of course, Senator McCain appears poised to spend tens of millions more between now and the Republican National Convention in connection with his primary campaign in direct violation of the spending limits that he agreed to abide by during the primary election period. Ultimately, it is quite conceivable that Senator McCain may spend in excess of \$100,000,000 on primary expenses during the period defined by federal law for qualified primary expenses. Thus, it is likely that Senator McCain will exceed the primary spending limit by \$40 million dollars or more.

For the reasons stated above, the FEC should (1) find reason to believe that Senator John McCain and the McCain Campaign have committed, a violation of Chapter 96 of Title 26 and of the Commission's rules, and should conduct an investigation; and (2) pursuant to 26 U.S.C. §9040(e), petition the appropriate U.S. District Court for injunctive relief to implement and enforce the provisions of Chapter 96 against Senator McCain and the McCain Campaign.

Respectfully submitted,


Jane Hamsher

Sworn to and subscribed before me this __ day of March 2008.



Notary Public in and for the District of Columbia

My commission expires: 4/14/2011

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