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December 1, 2008

BY HAND

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

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Re: MURs 5078, 6090, and 6108

Dear Mr. Jordan:

We are writing this letter on behalf of Obama for America (the "Committee") and Martin Nesbitt, as treasurer, (collectively referred to as the "Respondents") in response to the Complaints filed in the above-referenced matters by James C. Fling, the Republican National Committee, and Bridget Kohtz (the "Complainants"), respectively. In addition, we will submit under separate cover an affidavit signed by Chief Operating Officer Henry DeSio affirming the Committee's strict adherence to federal campaign finance law and regulations. For the reasons set forth below, the Complaints are without merit and should be dismissed.

The Complaints allege that Respondents have violated the Federal Election Campaign Act (the "Act") by knowingly accepting prohibited contributions from foreign nationals and excessive contributions from individuals. They have not. Respondents have acted in full compliance with the Commission's requirements at all times. The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. See 11 C.F.R. § 111.4(a), (d). Here, the Complaints present no evidence to suggest that Respondents have ever knowingly solicited, accepted, or received prohibited contributions. The Commission therefore may not find "reason to believe," and must dismiss the Complaints immediately.

Obama for America was the principal campaign committee for President-Elect Barack Obama's campaign for President. Since filing its Statement of Organization on January 16, 2007, the

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Committee has raised over \$730 million from 3,952,530 donors. Of this amount, more than \$450 million was received online through the campaign's website.

The volume of contributions the Committee raised, both online and through more traditional means, is unprecedented for a political campaign. To process them all, the Committee developed – in the extraordinarily short amount of time afforded it at the beginning of a two-year election-cycle – a remarkably complex and nimble vetting and compliance system. This system met and surpassed the procedural requirements the Act and Commission regulations impose on the collection and processing of contributions. Most importantly, it ensured that the Committee did not knowingly accept contributions in excessive amounts, or from foreign nationals or other prohibited sources.

As we describe in detail below, the Committee did everything it reasonably could to prevent the acceptance of unlawful contributions. It added safeguards on its webpage to prevent online donors from entering false or fraudulent data. It required donors living abroad to enter U.S. passport numbers when giving online, and to present their passport numbers when giving in person. Moreover, it went to extraordinary lengths to confirm the legitimacy of each contribution once the donor relinquished control of it, utilizing comprehensive vetting and compliance procedures and promptly refunding any contributions found to be excessive, or from a foreign national or other impermissible source. These cautious steps have yielded results: with respect to each specific impermissible contribution cited in the Complaints, the Committee located the problem and has refunded the contribution.

The Complaints present no evidence to suggest that the Committee did not act in full compliance with the Commission's requirements. Because the Complaints allege no actual conduct by Respondents that violates a statute or regulation over which the Commission has jurisdiction, the Complaints are without legal merit and should be dismissed.

## **FACTUAL AND LEGAL ANALYSIS**

### **A. Comprehensive Vetting and Compliance Procedures**

Before the Committee launched its fundraising program, the Committee carefully developed and implemented comprehensive vetting and compliance procedures to ensure that it did not knowingly solicit, accept, or receive prohibited contributions. Because the Committee believed that it would raise a significant percentage of its contributions over the Internet, additional procedures were developed to address the security concerns inherent to online fundraising. Special care was given to the process for raising money from donors who may live abroad, to ensure that contributions were not inadvertently received from foreign nationals.

Pursuant to this system, and consistent with the Commission's regulations, campaign staff and outside vendors were tasked with examining all contributions to the Committee once they were received – whether online, through direct mail, in person, or otherwise – for “evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed[ed]” federal contribution limits. 11 C.F.R. § 103.3(b). Contributions were further examined to ensure that the donors were not foreign nationals. See *id.* § 110.29. Any contributions made to the Committee that were found to be excessive, fraudulent, from a foreign national, or otherwise unlawful were promptly refunded in accordance with the Commission's regulations.

We explain those processes in further detail below.

#### 1. Online Fundraising

The Commission specifically permits the acceptance of contributions over the Internet, and has chosen not to “mandate[] a specific set of safeguards” for all campaigns that accept contributions over the Internet.” AO 2007-30 (Dodd for President), *citing* Explanation and Justification for Matching Credit Card and Debit Card Contributions in Presidential Campaigns, 64 Fed. Reg. 32,394, 32,395 (June 17, 1999).

Recognizing the difficulty of regulating in an area of “rapidly evolving technologies,” the Commission has chosen instead to rely on a variety of measures approved in advisory opinions that “provide a level of security sufficient to ‘allay concerns over the receipt of prohibited contributions.’” *Id.*; see also AO 1999-09 (Bradley for President).

The Committee's vetting and compliance procedures were entirely consistent with those recommended and approved by the Commission in its guidance to previous presidential campaigns. First, the Committee's online fundraising landing page clearly informed each prospective donor of the Act's source restrictions, in explicit language displayed in a location the donor could not possibly miss. Moreover, no donor could make a contribution without first affirming that the funds were lawful and consistent with the Act's requirements. Each donor had to check a box confirming that he or she was a United States citizen or permanent resident; that the funds were not from the general treasury of a corporation, labor organization, or national bank; that the funds were not made from the treasury of a person or entity who is a federal contractor; and that the funds were not provided by another person for the purpose of making the contribution.

Second, again consistent with the Act and Commission regulations, all donors were required to enter their full names and addresses; and donors making contributions of \$200 or more were further required to provide their occupation and employer. If the donor did not provide any of

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the required information, the Committee's website prompted the donor to provide the required information before accepting the contribution.

Any political campaign that raises money online must necessarily rely in the first instance on information the donors provide. Inevitably, there will be donors who, either fraudulently or just for misguided fun, enter inaccurate information, through no fault of the recipient committee. As long as the recipient committee adequately examines each contribution for any evidence of illegality, the law ~~enacts~~, and does not, penalize it for accepting the money, unless and until it discerns that the contribution was made illegally or fraudulently. Nevertheless, the Committee took extraordinary steps -- far beyond what the law requires -- to root out such contributions and refund them.

The Committee's compliance and vetting procedures included an extensive back-end process to ensure it caught and refunded any excessive, fraudulent, or otherwise unlawful contributions. As the volume of contributions to the Committee increased during the course of the campaign, the Committee continuously adjusted its vetting and compliance procedures to adapt to the increased volume. At regular intervals, the Committee conducted automated searches of its donor database -- including all contributions, whether raised online or not -- to identify any fraudulent or excessive situations. Contributions from repeat donors were examined to ensure that the total amount received from a single donor did not exceed the contribution limits. As new examples of erroneous data or fraudulent contributions were identified, the Committee refined its searches to identify other donors who may have entered similarly erroneous or fraudulent data.

These procedures provided a level of security more than sufficient to meet the Committee's legal obligations to ensure the lawfulness of contributions it accepted online. The Complaints present no evidence to the contrary to suggest that the Committee ever knowingly solicited, accepted, or received excessive or otherwise unlawful contributions through its website.

## **2. Contributions from Foreign Nationals**

The Committee also took significant steps to ensure that it did not knowingly solicit, accept, or receive any contributions from foreign nationals. See 11 C.F.R. § 110.20(g). As described above, donors who contributed online were required to check a box confirming that they were either a United States citizen or a permanent resident alien. Donors who entered a foreign address were further required to enter a valid U.S. passport number before making a contribution. Individuals who made contributions to the Committee in person at events held outside the United States were required to provide a valid U.S. passport number.

To ensure that the Committee had not inadvertently accepted contributions from foreign nationals, the Committee developed an additional screening process to confirm the validity of each contribution. In accordance with this process, the Committee surveyed each contribution

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received by the Committee since its inception in January 2007 and identified contributions with foreign city or country names, postal codes other than valid U.S. zip codes, non-U.S. email addresses, and/or passport numbers that did not conform to standard U.S. passport numbers. After manually eliminating those contributions known to have been made by a U.S. citizen or lawful permanent resident but nonetheless identified by the automated search, the Committee has attempted to contact each of the questionable donors individually – by telephone and email – to confirm U.S. citizenship or lawful permanent residency. The Committee continues to search its contribution database on a daily basis, and updates the list of potential foreign donors accordingly. Any contribution for which a valid U.S. address or U.S. passport number cannot be confirmed will be refunded.

#### **B. Resolution of Fraudulent or Foreign Contributions Cited in Complaints**

The Complaints allege that the Committee accepted five specific contributions that were excessive, fraudulent, or from a foreign national. In each case, the Committee has refunded the contribution or contributions at issue in a manner consistent with the Commission's regulations. With respect to the contributions made by Hossain Edwan, Monir Edwan, "Hibkj6, jkbkj", Decoded Pro, and Good Will, the tables attached as Exhibit A include the date of the contribution, the contribution amount, the date of the refund, and the refund amount. Contrary to what is alleged in the Complaints, the total amount received by the Committee from each of these contributors has been refunded or charged back to the credit card used to make the initial contribution(s).

The Committee no longer has funds from any of these contributors, and the Complaints present no evidence that the Committee ever knowingly solicited, accepted, or received contributions from these – or any other – prohibited contributors. See 11 C.F.R. § 110.20(g). There is no indication in the Complaints or elsewhere that the Committee ever had "actual knowledge" that the source of any funds solicited, accepted, or received was a foreign national, or that the funds were otherwise prohibited. *Id.* § 110.20(n)(4)(i). Nor was the Committee "aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received" was prohibited. *Id.* § 110.20(n)(4)(ii). Where the Committee was aware of facts that would lead a reasonable person to inquire as to the source and permissibility of the funds, the Committee conducted prompt and reasonable inquiries. See *id.* § 110.20(a)(4)(iii).

Given the unprecedented scope of the Committee's fundraising, Complainants speculate that the Committee must have acted in violation of federal law, and call for further investigation of the Committee's finances and reporting. Yet unsubstantiated legal conclusions from assumed facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. See Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

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The Committee's comprehensive vetting and compliance procedures speak for themselves. Not only has the Committee complied with federal law, but it has far surpassed what is required by the Act and the regulations. In every case, the Committee has used best efforts to ensure its full compliance with the Commission's requirements, and that it did not knowingly solicit, accept, or receive any unlawful contributions. The Committee has fully addressed each of the specific incidents cited in the Complaints, and the Complaints present no evidence to further support their allegations against the Committee.

For the foregoing reasons, Respondents respectfully request that the Commission dismiss the Complaints and take no further action.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Robert F. Bauer', with a long horizontal line extending to the right.

Robert F. Bauer  
Rebecca Gordon

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