



DEMOCRATIC NATIONAL COMMITTEE

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COMMISSION
OFFICE OF GENERAL
COUNSEL

2008 DEC 30 A 9 59

December 23, 2008

VIA FACSIMILE and FIRST CLASS MAIL

Mr. Jeff S. Jordan
Federal Election Commission
Office of the General Counsel
999 E Street, NW
Washington, DC 20463

**Re: MUR 6127 - Democratic National Committee and Obama Victory Fund,
Respondents**

Dear Mr. Jordan:

This letter is in response to your correspondence regarding the Complaint filed in the above-referenced MUR. The allegations against the DNC Services Corporation/Democratic National Committee and the Obama Victory Fund are without merit and no action should be taken against either the Democratic National Committee, Obama Victory Fund or Treasurer Andrew Tobias.

The Complaint, filed by the California Republican Party (CRP), contains a variety of allegations against a number of respondents. Complaint at 1. One allegation is made against the Obama Victory Fund (OVF), a joint fundraising committee established pursuant to 11 C.F.R. § 102.17 whose participants are the Democratic National Committee (DNC), a national party committee, as defined by 11 C.F.R. § 100.5(e)(4), and Obama for America (OFA), the principal campaign committee of President-Elect Barack Obama, as defined by 11 C.F.R. § 100.5(e)(1). The Complaint alleges that "VIDA Fitness made and Obama Victory Fund knowingly accepted a corporate contribution in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(b), (d)" in connection with an OVF fundraising event. Complaint at 1.

On September 26, 2008, the DNC's Gay and Lesbian Leadership Council (GLLC) hosted a fundraiser to benefit OVF at VIDA Fitness, a fitness center in Washington, D.C. Declaration of Thomas Petrillo (Petrillo Dec.) ¶ 3, attached hereto as Exhibit 1.

Democratic Party Headquarters ■ 430 South Capitol Street, SE ■ Washington, DC, 20003 ■ (202) 863-8000 ■ Fax (202) 863-8174

Contributions to the Democratic National Committee are not tax deductible.

Paid for by the Democratic National Committee, www.democrats.org.
Not authorized by any candidate or candidate's committee.

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An invitation to the event was sent by the DNC via e-mail to approximately 500 Lesbian, Gay, Bisexual and Transgendered (LGBT) donors in the metropolitan Washington, DC area. Petrillo Dec. ¶ 5. A copy of the invitation is attached as Exhibit A to Petrillo Dec.

The Complaint alleges that VIDA Fitness "unlawfully facilitated the making of contributions to Obama Victory Fund" in three ways: 1) by emailing "an Obama Victory Fund fundraising-event invitation . . . to its customer list in violation of 11 C.F.R. § 114.2(f)(2)(i)(C) because the "customer-recipients were not within VIDA's 'restricted class' and Obama Victory Fund's FEC disclosure reports do not indicate that VIDA received an 'advance payment for the market value of the list;'" 2) by "allowing Obama Victory Fund to use 'meeting rooms that are not customarily made available to clubs, civic or community organization[s] or other groups" in violation of 11 C.F.R. § 114.2(f)(2)(i)(D); and 3) by "allowing Obama Victory Fund to use its corporate and email list and gym facilities for fundraising activities without ever collecting payment" in violation of 11 C.F.R. § 114.2(f)(2)(i)(B). Complaint at 6. The Complaint alleges that OVF "knowingly accepted" these corporate contributions in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(b), (d).

1. Use of Email List

Without the prior knowledge or authorization of the DNC, OVF, or any staff member thereof, the owner of VIDA Fitness, David von Storch, sent an e-mail regarding the September 26, 2008 event to the VIDA Fitness e-mail list and to the e-mail list of Bang, a hair salon also owned by Mr. von Storch. Petrillo Dec. ¶ 7; copy of e-mail attached to the Complaint as Exhibit 1. The e-mail contained many of the same details regarding the September 26 event, but were not, as the Complaint alleges, the official invitations to the event. Complaint at 6.¹ Although the e-mails did not include the Commission's required joint fundraising notice, they did contain a hyperlink to the official event page which did contain the required disclaimers.

Because neither the DNC nor OVF ever asked Mr. von Storch to e-mail information regarding the September 26 event to the VIDA Fitness or Bang e-mail lists, neither the DNC nor OVF "knowingly accepted" a contribution as alleged. Although Mr. von Storch assisted the DNC and OVF in the planning the September 26 event, the DNC and OVF did not request, nor did the DNC have any prior knowledge that Mr. von Storch send this email to any list in his possession. Furthermore, Mr. Von Storch was never given any authority, either expressly or impliedly, to act as its agent in the preparation of any email or any other communication on its behalf. See 11 C.F.R. §§ 109.3(a); 300.2(b)(1).

¹ The sending of the e-mail to the VIDA Fitness and Bang e-mail lists is also a subject of MUR 6110. The DNC and OVF filed a separate response in that MUR with the Commission on December 19, 2008. Any additional discussion of the OVF and DNC regarding this issue is incorporated by reference herein.

Notwithstanding the fact that neither the DNC or OVF requested the sending of this email, it is our understanding that Mr. von Storch paid \$3,000 for the use of the VIDA Fitness e-mail list and, therefore, this action will mitigate any violation of section 441b by VIDA Fitness.

Since the use of an email list is not a "public communication," as defined by Commission regulations, it is our understanding that neither Mr. von Storch, nor the DNC or OVF is required to disclose the dissemination of the email as an in-kind contribution to the DNC or OVF. 11 C.F.R. § 109.21. However, at the request of Mr. von Storch, OVF will disclose an in-kind contribution, in the amount of \$3,000 from Mr. von Storch for his reimbursement to VIDA Fitness for the use of the email list.

2. Use of VIDA Facilities

On September 26, 2008, VIDA Fitness had not yet opened to the public. Because it was a new business without any history of customary behavior, it is premature to state that the space used for the event is not "customarily made available to clubs, civic or community organizations or other groups." Complaint at 6. Mr. von Storch is an active and committed Democrat who may very well plan on making the VIDA Fitness space available to other clubs, candidates or groups. The Complaint's allegation is that it will not be used that way is speculative at best and certainly does not set forth any facts that could establish any violation by the DNC or OVF of the Federal Election Campaign Act or the Commission's regulations.

As a general matter, it is very common for all types of businesses to allow their facilities to be used for political purposes at a determined fair marked value. Accordingly, OVF received an invoice for the event on November 26, 2006 and the amount was paid in full on December 5, 2008. Tom Petrillo, the director of the GLLC and the fundraiser in charge of the September 26 event requested an invoice following the event but did not immediately receive one. Petrillo Dec. ¶ 9. Beginning October 20, 2008, Mr. Petrillo was sent to Ohio to do field work until after the November 4 general election. *Id.* ¶ 10. The invoice was paid just over 60 days from the date of the event. Petrillo Dec. ¶¶ 12-13. The DNC believes this time frame is well within the ordinary course of business for extension of credit accorded to political committees pursuant to 11 C.F.R. § 116.3. Therefore, neither the DNC nor OVF received any prohibited corporate in-kind contribution from VIDA Fitness.

Given the circumstances described herein, the DNC and OVF respectfully request that the Counsel's Office either immediately dismiss the complaint as it pertains to the DNC and OVF, or, in the alternative, consider referring this matter to the Commission's ADR process. By this written request, the DNC and OVF agree to the Commission's terms for participation in the ADR process and agree to participate fully in the process should the Commission decide to pursue this matter. While the DNC and OVF understand that such referral is not automatically granted, they believe that the circumstances described herein warrant such a referral.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Sandler', with a long horizontal flourish extending to the right.

Joseph E. Sandler

General Counsel

Neil Reiff

Deputy General Counsel

Sandler, Reiff & Young, PC

300 M Street, SE Suite 1102

Washington, DC 20003

Amanda S. La Forge

Chief Counsel

Democratic National Committee

430 South Capitol Street, SE

Washington, DC 20003

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Exhibit A

10044261326

**The Gay and Lesbian Leadership Council
of the
Democratic National Committee**

Cordially invites the LGBT Community and Allies to a reception with

**Sarah Jessica Parker
Benefiting the Obama Victory Fund**

Friday, September 26, 2008

**Vida Fitness
1515 15th Street, NW
Washington, DC**

6:00 PM – 8:00 PM

Host Committee: \$2,500 (Write/Raise)

VIP: \$1,000 (Write)

***Host committee members are invited to a VIP reception at 6:00 PM at HALO,
located at 1435 P Street, NW***

Supporter: \$250

**Friend: \$100
(Limited tickets at this level)**

**To R.S.V.P. please complete the form below or visit:
<https://donate.barackobama.com/page/contribute/DCSJP>**

**If you have any questions, or would like additional information, please contact
Thomas Pettillo @ _____ or at @dnc.org
RSVP by fax to 202-572-7917**

Contributions and gifts to Obama Victory Fund are not deductible for federal income tax purposes.

**Paid for by Obama Victory Fund, a joint fundraising committee authorized by Obama for America and
the Democratic National Committee.**

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The first \$2,300 of each contribution from an individual will be allocated to Obama for America and will be considered designated for the general election. The next \$28,500 of each contribution from an individual will be allocated to the Democratic National Committee. Any contributor may designate his or her contribution for a particular participant. (Participants are Obama for America and the DNC). The allocation formula above may change if any contributor makes a contribution that, when allocated, would exceed the amount that the contributor may lawfully give to either participant.

Please make checks payable to:
OBAMA VICTORY FUND
Thomas Petrillo
430 S. Capitol Street, SE
Washington, DC 20003
Fax: (202) 572-7917

Total Amount: \$ _____

Click here to contribute online at <https://donate.barackobama.com/page/contribute/DCSJP>

Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and employer of individuals whose contributions exceed \$200 in an election cycle.

First & Last Name: _____

My Guests Name: _____

Address: _____

City/State/Zip: _____

If foreign address provide US passport number: _____

Employer: _____ (Occupation: _____)

Work Phone: _____ Work Fax: _____

Home Phone: _____ Email: _____

☐ I certify that I am a U.S. citizen or legal permanent resident of the U.S.

Signature: _____

Contribute by Credit Card

Please bill my personal credit card: ☐ Visa ☐ MasterCard ☐ AMEX ☐ Discover

Card Number: _____ Exp: _____

Name as it appears on the card: _____

Signature: _____

Second Name on Account, if Joint Account*: _____

***Contributions will be evenly attributed between names.**

2nd Name Employer: _____ 2nd Name (Occupation: _____

Second Signature for Joint Account: _____

Invited by: _____

OVF Staff Name: _____ Signature: _____

Obama Victory Fund does not accept contributions from currently registered federal lobbyists, registered foreign agents, political action committees, or minors under the age of 16. Federal law prohibits the acceptance of corporate contributions. Contributions and gifts to the Obama Victory Fund are not deductible for federal income tax purposes.

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Paid for by Obama Victory Fund, a joint fundraising committee authorized by Obama for America and the Democratic National Committee.

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