



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 02 2010

Mr. Paul Kromberg

Springfield, VA 22153

RE: MUR 6220
Obama Victory Fund and Andrew
Tobias, in his legal capacity as
treasurer
Julie Walden

Dear Mr. Kromberg:

On May 25, 2010, the Federal Election Commission reviewed the allegation in your complaint dated October 19, 2009, and found that on the basis of the information provided in your complaint, and information provided by Obama Victory Fund and Julie Walden, there is no reason to believe that Obama Victory Fund and Andrew Tobias, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.17(c)(2). The Commission also found that there is no reason to believe that Julie Walden violated the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations. Accordingly, on May 25, 2010, the Commission closed the 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, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,

Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Obama Victory Fund and Andrew Tobias, in his official capacity as treasurer
Julie Walden **MUR: 6220**

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Paul Kromberg. The complaint alleges that during the 2008 presidential campaign, Obama Victory Fund and Andrew Tobias, in his official capacity as treasurer, ("OVF") and Julie Walden, solicited contributions in excess of the Federal Election Campaign Act's (the "Act") individual contribution limits in connection with an artist's portfolio available for contributions of \$20,000. In support, the complaint provides an excerpt from a website page owned by a New York art gallery, <http://www.joniweyl.com/DNClist.rev.1.09.pdf> ("art gallery website"), which contains two solicitations for contributions, one for the OVF, and one for the Committee for Change. The excerpt from the art gallery website page set forth in the complaint states:

With a donation of \$20,000 you will receive the complete portfolio of 13 prints.

If you are interested in reserving a portfolio, please send a check for the full amount, made payable to the Obama Victory Fund to Julie Walden c/o Obama Victory Fund, 1800 Century Blvd East #210 Los Angeles, California 90067. If you have contributed the maximum donation \$28,500 to the Democratic National Committee, you can make the check payable to "Committee for Change." The maximum amount that can be contributed to all party committees is \$65,500.

(Italics and bolding as in the complaint).

Respondents Julie Walden, who worked for Obama for America at the time of the solicitation, and the OVF, a joint fundraising committee comprised of Obama for America and the Democratic National Committee ("DNC"), maintain in separate responses that the complaint

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should be dismissed. According to the responses, although Respondents solicited for contributions to OVF in connection with an artist's portfolio, they did not see the art gallery website solicitation prior to receiving the complaint, and did not explicitly or implicitly authorize it. They point out that the \$20,000 solicitation for the OVF for the artist portfolio was well within the applicable contribution limits and that the entire solicitation on the art gallery website was accompanied by the OVF's standard form that met the notice requirements that the Commission's regulations mandate for joint fundraising committee solicitations.

With respect to the solicitation for Committee for Change, a separate joint fundraising committee, which did not include the notice requirements for joint fundraisers, Respondents assert that because the solicitation was posted on a website without their authorization, the owners of the website were not acting as Respondents' agents. Therefore, according to Respondents, they cannot be held liable for the solicitation's failure to include the required notice for joint fundraisers with respect to the solicitation for Committee for Change.

The portion of the art gallery website solicitation for contributions in connection with the artist portfolio, coupled with the attached OVF joint fundraising notice, complied with the Act and the Commission's regulations both in terms of the contribution limits and joint fundraising. With respect to the portion soliciting contributions for Committee for Change without including the required joint fundraising notice, Respondents have denied authorizing the solicitation on the art gallery's website. There is no information to the contrary, nor has the Commission located any other solicitations for OVF in connection with the artist portfolio that also contained a solicitation for Committee for Change or solicited excessive contributions. Accordingly, there is no reason to believe that OVF violated 2 U.S.C. § 441a(f) or 11 C.F.R. § 102.17(c)(2). There is

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also no reason to believe that Julie Walden violated the Act and the Commission's regulations and the Commission closes the file.

II. FACTUAL AND LEGAL ANALYSIS

Political committees may engage in joint fundraising with other political committees or with unregistered committees or organizations. *See* 11 C.F.R. § 102.17(a)(1)(i). Commission regulations set forth at 11 C.F.R. § 102.17(c)(1) through (8), require, *inter alia*, a written agreement; a fundraising notice; a separate deposit account; and compliance with reporting requirements, contribution limitations, and allocation procedures contained therein. The fundraising notice should include the names of all committees participating in the joint fundraising activity, the allocation formula to be used for distributing joint fundraising proceeds, a statement informing contributors that, notwithstanding the formula, they may designate their contributions for a particular participant, and a statement that the formula may change if a contributor makes a contribution which would exceed the amount that the contributor may give to any participant. 11 C.F.R. § 102.17(c)(2).

For the 2008 election cycle, an individual could contribute \$2,300 to a candidate and his authorized political committee for election to a federal office, such as Obama for America, and \$28,500 to political committees established and maintained by a national political party, such as the DNC. *See* 2 U.S.C. § 441a(a)(1)(A). No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of section 441a. *See* 2 U.S.C. § 441a(f). Joint fundraising committees may solicit and accept contributions up to the combined limits of their participating committees. *See* 11 C.F.R. § 102.17(c)(5).

The OVF is a joint fundraising committee comprised of Obama for America, Barack Obama's authorized committee for the 2008 presidential election, and the DNC. According to

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her response, Julie Walden served as Obama for America's Regional Finance Director for Southern California and the Southwest from January 2007 to November 2008, and solicited contributions for the OVF in that capacity. The Committee for Change, referenced in art gallery website page excerpted in the complaint, *see* Introduction, *supra*, was created in July 2008 to fund voter mobilization and registration in battleground states, and it is not a participant in the OVF. *See* <https://mydemocrats.org/page/contribute/CFC>. Rather, it is a separate joint fundraising committee registered with the Commission, comprised of the DNC and eighteen state democratic parties. *See id.*

The complaint contains an excerpt from the cover page to a multi-page document pertaining to the artist's portfolio found on the New York art gallery's website (now archived) at <http://www.joniweyl.com/DNClst.rev.1.09.pdf>. The cover page is a letter dated October 1, 2008, that lists no specific postal addressees. The letter contains an announcement of an artist's portfolio printed by the Los Angeles-based artists' workshop Gemini G.E.L., available for donations of \$20,000 to the OVF; the solicitation for the Committee for Change; and Julie Walden's email address and phone number. The letter is signed "Best regards, Gemini G.E.L. at Joni Moisant Weyl." Following the letter are a formal-looking solicitation in connection with the artist's portfolio, which does not contain any reference to Committee for Change, pictures of the 13 art prints, and the OVF's contribution form containing the information required by the Commission's joint fundraising regulations. According to information available on its current home page, <http://www.joniweyl.com>, Gemini G.E.L. at Joni Moisant Weyl is a New York art gallery that exhibits and represents the Los Angeles-based artists' workshop Gemini G.E.L., and Joni Weyl is the owner of the New York art gallery. A newspaper article reports that Gemini G.E.L. commissioned 13 artists to donate works of art to comprise the "Artists for Obama"

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portfolio to raise funds for Barack Obama's presidential campaign, and it is "the only art group dealing directly with Obama Victory Fund, the joint fundraising committee authorized by Obama for America and the Democratic National Committee." See Kate Linthicum, *'Artists for Obama' donate prints to raise money for the candidate*, Los Angeles Times, September 29, 2008.

Although the New York art gallery is associated with Gemini G.E.L., Gemini G.E.L.'s website does not contain a solicitation for Committee for Change. See discussion *infra*.

In its original response to the complaint, the OVF defended the art gallery website solicitation excerpted in the complaint as if it were associated with it, pointing out that the \$20,000 solicitation for the OVF in connection with the artist portfolio was well within the contribution limits available to the Committee, since the DNC could accept \$28,500 per year from an individual and Obama for America could accept contributions of \$2,300 per election from an individual. The response concluded that "[t]he only solicitation referred to in the complaint solicited an amount well below the maximum allowable to the DNC. And the solicitation itself complied in every respect with the Commission's requirements for joint fundraising committees." OVF Response dated December 9, 2009. Although the OVF's response correctly stated that the solicitation for OVF did not request excessive contributions, it did not address the solicitation for contributions to the Committee for Change. Accordingly, the Office of General Counsel sent a letter to the OVF requesting voluntary amplification concerning whether the solicitation for the Committee for Change complied with the Commission's joint fundraising regulations and whether the Committee for Change received contributions as a result of the solicitation.

In response, the OVF stated for the first time that while it solicited contributions in connection with an artist portfolio, it had no knowledge of the particular solicitation referenced

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in the complaint prior to receiving the complaint, and it had not expressly or implicitly authorized it. The OVF further asserted that because the owners of the New York art gallery website were not acting as agents of the Committee, as set forth in 11 C.F.R. §§ 109.3(a) and 300.2(b), OVF cannot be held liable for the owners' actions or any failure to comply with the joint fundraising regulations in connection with the solicitation for the Committee for Change. Finally, the OVF stated that it did not find any record of receiving contributions in response to the solicitation excerpted in the complaint. Julie Walden's response to the complaint mirrored OVF's responses, and also asserted that she had no knowledge of personally receiving any contributions in the response to the solicitation on the art gallery website referenced in the complaint.

However the solicitation for Committee for Change came to be part of the October 1, 2008 cover letter on the art gallery website, there is no link to the Respondents except for the reference to Julie Walden and the New York art gallery's asserted connection with Los Angeles-based Gemini G.E.L., the only art group that reportedly dealt directly with OVF. The Gemini G.E.L. ("Gemini") website, however, includes only a copy of the formal-looking solicitation in connection with the artist's portfolio found in the multi-page document on the art gallery website, pictures of the 13 art prints, and the OVF's contribution form. Gemini's website does not include the solicitation letter on the art gallery website that contained the solicitation for the Committee for Change. See http://www.geminigel.com/artists_for_obama.pdf.

There is no publicly available information that contradicts the Respondents' assertions that they did not explicitly or implicitly authorize the solicitation letter on the art gallery's website and that they were not aware of any contributions that resulted from it. Moreover, the Commission is not aware of any other solicitations for the OVF that also solicit for the

Committee for Change or any that solicit excessive contributions in connection with the artist portfolio.

Based on the circumstances discussed above, there is no reason to believe Obama Victory Fund and Andrew Tobias, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) or 11 C.F.R. § 102.17(c)(2). There is also no reason to believe Julie Walden violated the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations. Finally, the Commission closes the file.

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