

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6531

DATE COMPLAINT FILED: February 13, 2012

DATE OF NOTIFICATION: February 16, 2012

DATE OF LAST RESPONSE: April 10, 2012

DATE ACTIVATED: March 23, 2012

EXPIRATION OF STATUTE OF LIMITATIONS:
May 11, 2016¹

COMPLAINANT:

Obama for America

RESPONDENTS:

Obama-Biden 2012

Exodo 80 Inc.

Miguel Figueroa

RELEVANT STATUTES:

2 U.S.C. § 441h(b)

2 U.S.C. § 441d(a)

11 C.F.R. § 110.16

11 C.F.R. § 110.11(a)

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

RECEIVED
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I. INTRODUCTION

Obama For America ("OFA"), the principal campaign committee of President Obama, filed a complaint alleging that an organization calling itself "Obama-Biden 2012" is fraudulently misrepresenting itself as acting on behalf of OFA for the purpose of soliciting contributions, in violation of 2 U.S.C. § 441h(b). The complaint attaches a direct mail piece asking recipients to make a contribution to Obama-Biden 2012 and visit its website, www.obama-biden2012.org.

¹ Although a comment posted on the Obama-Biden 2012 website suggests the site was in existence as early as May 11, 2011, we do not have sufficient information to determine an exact date on which the statute of limitations expires.

1 which features OFA's logo, markets Obama-Biden 2012 merchandise not authorized by OFA,
2 and solicits donations to Obama-Biden 2012. The complaint alleges that the Obama-Biden 2012
3 website is registered to Miguel Figueroa, who is also listed as the president and registered agent
4 of the non-profit corporation Exodo 80, Inc. ("Exodo 80") (collectively, "Respondents").

5 In response to the complaint, Figueroa acknowledges that Exodo 80 sponsored the
6 Obama-Biden 2012 website, and that it sent the direct mail piece attached to the complaint.
7 Figueroa claims that he did not intend to commit any fraudulent acts, but rather sought to engage
8 in "independent actions to support the reelection of Obama-Biden." Resp. at 1.

9 Based on information in the complaint and responses, we recommend that the
10 Commission find reason to believe that Respondents violated 2 U.S.C. § 441h(b) by representing
11 that Obama-Biden 2012 was acting on behalf of OFA to solicit contributions. We further
12 recommend that the Commission find reason to believe that Respondents violated 2 U.S.C.
13 § 441d(a) by failing to include a proper disclaimer on the direct mail piece. We also recommend
14 that the Commission authorize compulsory process to assist in an investigation of this matter.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Factual Background**

17 Exodo 80 is registered with the Florida Department of State as a non-profit corporation.
18 Articles of Incorporation (June 13, 2011), *available at* www.dos.state.fl.us. According to its
19 website, Exodo 80 is a "nonprofit foundation dedicated to creating organizations that are
20 designed to work for the betterment of life and human life." See www.exodo80.com. The
21 website lists and links to the websites of eight other organizations that it "sponsors," one of
22 which is "Obama-Biden 2012" at www.obama-biden2012.org. Figueroa is the president and
23 registered agent of Exodo 80.

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1 While the home page of Exodo 80's website continues to display a link to the Obama-
2 Biden 2012 website, which was functioning as recently as June 5, 2012, it is no longer
3 operational. According to previously downloaded pages of the Obama-Biden website, Obama-
4 Biden 2012 sought to create clubs to support the re-election of the President. *See* www.obama-
5 biden2012.org (on file with the Commission). The website prominently featured the OFA logo
6 and an image of President Obama and Vice President Biden superimposed over what appears to
7 be an audience at a campaign rally. The website provided examples of activities undertaken by
8 Obama-Biden 2012, including distributing flyers, postcards, and souvenirs on the street; placing
9 "bumper [*sic*] stickers on automobiles;" and giving "cloths [*sic*], food, and hope to the
10 homeless." *Id.* The website also included a tab labeled "Donate Now," which allowed visitors
11 to use Paypal to make online donations to Obama-Biden 2012.³ *See id.*, attached here as
12 Attach. 1. Another tab, labeled "Souvenirs," linked to a page that stated, "When you donate to
13 Obama-Biden2012.org, we will be happy to send you the following gifts and souvenirs," and
14 included images of t-shirts, key chains, and coffee mugs featuring the OFA logo and pictures of
15 the candidates. *Id.*, attached here as Attach. 2.

16 In the "Comments" section of the Obama-Biden 2012 website, one visitor stated, "I
17 would like to sign up for the 2012 re-election campaign to volunteer for My President and Vice-
18 President Let me know how to get started with helping them get Re-Elected." Margaret
19 Phipps, Comment to Obama-Biden 2012 (June 25, 2011, 6:23 pm), http://obama-
20 biden2012.org/wordpress/?p=4.

³ The link to Paypal was functional in March 2012, but when visited on May 11, 2012, the link to Paypal had been removed, and the page instructed visitors to donate by check made payable to Exodo 80. When last visited on June 5, 2012, the page stated that Obama-Biden 2012 was no longer accepting donations, and included an image of our April 6, 2012, clarification letter. *See infra* fn. 4.

1 Obama-Biden 2012 was also responsible for a direct mail piece asking recipients to
2 "work for Obama-Biden reelection," and directing them to www.obama-biden2012.org. See
3 Compl. Attach. 1, attached here as Attach. 3. The mail piece provided recipients with a form to
4 make a "tax free contribution," which instructed them to make checks payable to Obama-Biden
5 2012 or click on the "Donate Now" tab on its website. *Id.*

6 OFA alleges that the Obama-Biden 2012 website and direct mailer fraudulently represent
7 Obama-Biden 2012 as an organization acting on behalf of OFA for the purpose of soliciting
8 contributions, in violation of 2 U.S.C. § 441h(b). Compl. at 2. OFA states that it did not
9 establish or authorize www.obama-biden2012.org, which misappropriates OFA's website logo
10 and merchandise. *Id.* at 1. OFA also states that it has never received any contribution from, or
11 had any association with, Obama-Biden 2012. *Id.*

12 In response to the complaint, Respondents take responsibility for the direct mail piece,
13 stating that, "the reason for the sending of these letters was [*sic*] independent actions to support
14 the reelection of Obama." Resp. at 1. Figueroa also claims, however, that, "our intention was
15 not to make fraudulent acts." *Id.* at 2. The response offers to provide Exodo 80's bank
16 statements to show that it received no external funding, and states that it will stop sending letters
17 on behalf of Obama-Biden 2012, discontinue the website, return any future contributions, and
18 "destroy any advertising." *Id.* at 1-2.⁴

19 Figueroa filed two supplemental responses. On April 10, 2012, he submitted a response
20 asserting that Exodo 80 had returned a \$100 donation, but which also suggested that Exodo 80
21 intended to use donations to Obama-Biden 2012 to finance other programs: "EXODO80 has

⁴ The Office of the General Counsel sent Figueroa a clarification letter advising him not to "destroy" any materials pertaining to this matter, and accepting his offer to provide Exodo 80's bank statements. Letter from Daniel A. Petalas, Assoc. Gen. Counsel, FEC to Miguel Figueroa, President, Exodo 80, Inc. (Apr. 6, 2012).

1 eight programs that are sleeping because their only financial support broke. But through work
2 www.obama-biden.org would receive a donation as we could to work in other programs”
3 Supp. Resp., Apr. 12, 2012 (hereinafter, “April Response”). This response also included what
4 appears to be a request for donations to pay for a trailer emblazoned with “Obama-Biden 2012”
5 and pictures of the candidates. April Response at 2. On May 11, 2012, Figueroa submitted a
6 second supplemental response consisting of copies of two voided checks made out to Obama-
7 Biden 2012, totaling \$300, and two bank statements for Exodo 80, Inc., DBA Obama-Biden
8 2012. Second Supp. Resp., May 11, 2012 (hereinafter, “May Response”). The first statement,
9 dated November 30, 2011, shows \$100.16 in deposits and no withdrawals. The second
10 statement, dated February 29, 2012, shows no deposits and withdrawals of \$87.50, the total
11 balance of the account at that time. Figueroa asserts that this was the last bank statement before
12 he closed the account.

13 **B. Legal Analysis**

14 1. Fraudulent Misrepresentation

15 The Federal Election Campaign Act of 1971, as amended, (the “Act”) prohibits a person
16 from fraudulently misrepresenting himself as speaking, writing, or otherwise acting for or on
17 behalf of any candidate or political party or employee or agent thereof for the purpose of
18 soliciting contributions or donations. 2 U.S.C. § 441h(b); *see also* 11 C.F.R. § 110.16. Section
19 441h differs from common law fraudulent misrepresentation in that it does not require proof of
20 the common law requirements of justifiable reliance and damages. *See* Disclaimers, Fraudulent
21 Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,969
22 (Dec. 13, 2002) (explanation and justification) (citing *Neder v. United States*, 527 U.S. 1, 24-25
23 (1999)). Additionally, even absent an express misrepresentation, a scheme devised with the

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1 intent to defraud is deemed a fraud under the Act and Commission regulations if it was
2 reasonably calculated to deceive persons of ordinary prudence and comprehension. *See United*
3 *States v. Thomas*, 377 F.3d 232, 242 (2d Cir. 2004) (citing *Silverman v. United States*, 213
4 F.2d 405 (5th Cir. 1954)); *FEC v. Novacek*, 739 F.Supp.2d 957, 961 (N.D. Tex. 2010) (finding
5 that defendants knowingly and willfully violated 2 U.S.C. § 441h(b)); *see also* Factual & Legal
6 Analysis at 9, MUR 5951 (Californians for Change).

7 Respondents represent themselves as acting on behalf of OFA in several ways. Aside
8 from operating under the name "Obama-Biden 2012" at the domain name www.obama-
9 biden2012.org, they placed the OFA logo both on the pages of this website and on merchandise
10 that it advertised on this website. The website also featured photographs of volunteers in
11 Obama-Biden 2012 t-shirts, apparently serving food to the homeless. At least one visitor to the
12 site appears to have believed that the organization is acting on behalf of OFA, because she left a
13 comment stating that she would like to sign up for the 2012 reelection effort. Additionally,
14 Respondents' direct mail piece invites recipients to "work for Obama-Biden reelection."

15 Obama-Biden 2012 appears to have misrepresented itself as being associated with OFA
16 for the purpose of soliciting donations or contributions. The website featured a link to "Donate
17 Now," which until recently asked visitors to make a donation to Obama-Biden 2012 via Paypal.
18 Similarly, the direct mail piece invites recipients to make a "tax free contribution" to Obama-
19 Biden 2012, and provides various options by which to do so.⁵

20 The Obama-Biden 2012 website and mailer appear capable of misleading persons of
21 ordinary comprehension. There is no dispute that Respondents used OFA's campaign logo and
22 candidate images to solicit contributions and donations without the authorization of OFA. There

⁵ It is not entirely clear, however, whether Figueroa's intent was to defraud potential donors or to establish an unauthorized campaign auxiliary organization.

1 is no information to indicate that Respondents had any intention of forwarding the contributions
2 they received to OFA; instead, the April Response seems to indicate that they intended to use the
3 contributions to fund their other programs. Figueroa specifically asserts, however, that the
4 Respondents did not act with the intent to defraud.

5 Based on the available information, which indicates that Obama-Biden 2012 represented
6 itself as acting on behalf of OFA to solicit contributions in a scheme reasonably calculated to
7 deceive, we recommend that the Commission find reason to believe that the Respondents
8 violated 2 U.S.C. § 441h(b). However, because there remains a question concerning the
9 fraudulent intent with which Respondents may have acted, we also recommend that the
10 Commission authorize the use of compulsory process as may be necessary to resolve that
11 question.

12 2. Disclaimer Violation

13 Under the Act, public communications that solicit contributions are required to include a
14 disclaimer as to who paid for and authorized the communication, and specifically state whether
15 the communication was authorized by a candidate or candidate's committee. 2 U.S.C. § 441d(a);
16 11 C.F.R. § 110.11(a)(3). Commission regulations define "public communication" to include a
17 mass mailing, but not internet communications, except for those placed for a fee on another
18 person's website. 11 C.F.R. § 100.26.

19 Obama-Biden 2012's website constitutes an internet communication, but not one that was
20 placed for a fee on another person's website. Accordingly, it does not qualify as a public
21 communication under 11 C.F.R. § 100.26 and does not violate the Act. While there is no
22 information as to the exact quantity disbursed, the direct mail piece, however, appears to
23 constitute a mass mailing under 11 C.F.R. § 100.27, and therefore a public communication under

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1 11 C.F.R. § 100.26. Because the direct mail piece does not include the information required by
2 the statute, we recommend that the Commission find reason to believe that Respondents violated
3 2 U.S.C. § 441d(a) by failing to include a proper disclaimer on the communication.

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IV. RECOMMENDATIONS

1. Find reason to believe that Obama-Biden 2012; Exodo 80, Inc.; and Miguel Figueroa violated 2 U.S.C. § 441h(b).
2. Find reason to believe that Obama-Biden 2012; Exodo 80, Inc.; and Miguel Figueroa violated 2 U.S.C. § 441d(a).
3. Approve the attached Factual and Legal Analysis.
4. Authorize the use of compulsory process.
5. Approve the appropriate letters.

Date

6/19/12

Anthony Herman
General Counsel

Daniel A. Petalas
Associate General Counsel

Mark Shonkwiler
Assistant General Counsel

Margaret Ritzert Howell
Attorney

Attachments

1. "Donate Now" Page of www.obama-biden2012.org
2. "Souvenirs" Page of www.obama-biden2012.org
3. Direct Mailer

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Donate Online

Donating online is secure, quick and simple.

Hacer Donación

Si deseas colaborar con una donación, puedes hacerlo mediante Paypal o a través de tarjeta de crédito haciendo clic en el botón DONAR.

US\$

Attachment 1
Page 1 of 1

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Souvenirs

When you donate to Obama-Biden2012.org, we will be happy to send you the following gifts and souvenirs.



Attachment 2
Page 1 of 1

WWW.OBAMA-BIDEN2012.ORG

If you wish you can access to our website and ask for free T-shirt with a picture of Obama-Biden and some souvenirs.

Work for Obama-Biden reelection, is work for the goodness humanity. If you wish you could write a comment in our website.

Comment taken from WWW.OBAMA-BIDEN2012.ORG

Replacing the primary care physician from the seriously ill, is equivalent to replacing the current administration in 2012.

History has demonstrated that the superior or belligerent hands and in difficult times have created war. Blessed is the creator for giving us Obama-Biden as messengers of peace.

God is fantastically, difficult times for those (engaged in wars) have the backbone in the world with the Nobel Peace Prize. Obama-Biden are messengers of peace.
www.esclusamatafrica.com

Small business generate more revenue and economic stability than any other country's income. To reactivate the economy of the United States should encourage small businesses. On Obama-Biden is hopeless without them recall.
www.eurocabinet.com

Why a 2012 certification guarantees a major benefit?

When Obama-Biden destroyed the massive terrorist enemy, Bin Laden, they did it without noise and fanfare. Common sense tells us that if they had to redo would also be assisted by the creator.

If you wish open a Obama-Biden support club, you could access to our website and you will receive help and assistance.

Example of the work made for the Club:
www.Exodo80.com It is the first Club:

- Place Bumper Stickers on automobiles.
- Pass out flyers, postcards and souvenirs on the streets.
- Prepare teams to give cloth, food and hope to the homeless.
- www.Exodo80.com have a volunteer team that will reject any media that attack with calumnies to Obama-Biden's campaign.

Tax Free Contribution

Name: _____

Email address: _____

Address: _____

City: _____ State/Prov.: _____

County: _____ Postal Code: _____

Amount of Contribution: \$ _____

For your mind peace, you can always check online the bank statements of our foundation

Check enclosed (payable to Obama-Biden 2012)

Check #: _____

Or go to www.Obama-Biden2012.org and click on "Donate Now"

Attachment _____

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WWW.OBAMA-BIDEN2012.ORG
P.O. BOX 52-7666
Miami, FL 33152



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Attachment 3
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