



November 3, 2008

Thomasenia P. Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

**Re: Complaint Against Senator Barack Obama, Obama for America,
Obama Victory Fund, Saul Ewing LLP, and VIDA Fitness**

Dear Ms. Duncan:

Senator Barack Obama's actions have always contradicted his rhetoric. He claims history's most transparent campaign, yet refuses to reveal all of its donors. He trumpeted his commitment to the public funding system to burnish his "reform" credentials, but then quietly broke his pledge when it was no longer politically expedient. Recent media reports have revealed still more behavior by the Obama Campaign and its political allies that falls far below the standards set by Senator Obama's lofty oratory. Unfortunately, this misconduct is not merely disappointing; it violates the Federal Election Campaign Act ("FECA") and the Federal Election Commission's regulations.

The California Republican Party files this complaint to inform the Commission of five violations that either have occurred or are about to occur: (1) Obama for America violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3 by failing to fully disclose its transfer of a donor list to Project Vote, an affiliate of ACORN; (2) Obama for America converted campaign funds to Senator Obama's personal use by paying his personal travel expenses in violation of 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.2(e); (3) Obama for America intends to accept and Saul Ewing, LLP intends to make an excessive contribution in violation of 2 U.S.C. § 441a(a), (f) and 11 C.F.R. §§ 110.1(e), 110.9; (4) VIDA Fitness facilitated the making of contributions to Obama Victory Fund in violation of 11 C.F.R. § 114.2(f); and (5) 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).

I. OBAMA FOR AMERICA UNLAWFULLY HID ITS INTERACTION WITH PROJECT VOTE, AN AFFILIATE OF ACORN

According to court testimony, Obama for America (“OFA”) provided its donor list to an affiliate of the scandal-ridden group ACORN in violation of important disclosure requirements under FECA and the Commission’s regulations. A candidate’s authorized committee must regularly report its disbursements, which may be non-cash value transfers.¹ More particularly, if an authorized committee gives to a person any disbursement(s) with an aggregate value of over \$200 during an election cycle, the committee must report to the Commission, among other things, the disbursement recipient’s name and address.² Disclosure requirements like these have been referred to as the “essential cornerstone” of campaign finance regulation.³ They allow the public to make voting decisions after scrutinizing candidates’ financial relationships with outside persons.

Senator Obama has tried mightily to downplay his relationship with ACORN, a “community organizing” group that multiple states are investigating for voter fraud. His campaign denies that it “has any ties” to ACORN, but it paid an ACORN front organization \$832,000 for get-out-the-vote efforts during the primary-election period. OFA initially listed this payment on its FEC report as an expenditure for “staging, sound, [and] lighting.”⁴ It only corrected its report once a press outlet exposed the expense’s true nature.

An ACORN whistleblower’s court testimony has now revealed another OFA reporting flaw.⁵ OFA’s privacy policy allows it to transfer donor lists to “organizations with similar political viewpoints and objectives, in furtherance of [its] own political objectives.”⁶ In accord with this policy, OFA apparently provided its donor lists to the Development Director at ACORN’s affiliate, Project Vote, so that Project Vote could “cultivat[e] Obama donors who had maxed out on donations to the candidate, but who could contribute to voter registration efforts.”⁷ Because donor lists have value,⁸ OFA was required to disclose this transfer as a disbursement to Project Vote.⁹ It was also required to disclose Project Vote’s name and address.¹⁰ OFA failed to do both. Had OFA properly disclosed its finances, voters would not have been forced to wait until six days before the election to learn of this link between ACORN and Senator Obama’s

¹ 11 C.F.R. § 104.3(b).

² 11 C.F.R. § 104.3(b)(4)(vi).

³ *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 223 (1999) (O’Connor, J. dissenting in part and concurring in part).

⁴ Stephanie Strom, *On Obama, ACORN, and Voter Registration*, NY Times, Oct. 11, 2008 at A13.

⁵ This testimony was offered in *Moyer v. Cortes*, Commonwealth Court of Pennsylvania (Civ. No. 497 MD 2008) (filed Oct. 17, 2008).

⁶ Obama for America Website, *Our Online Privacy Policy*, at <http://www.barackobama.com/privacypolicy/>.

⁷ John Fund, *An ACORN Whistleblower Testifies in Court*, Wall St. J., Oct. 30, 2008, http://online.wsj.com/article/SB122533169940482893.html?mod=todays_us_opinion

⁸ *See generally*, Fed. Election Comm’n Adv. Ops. 2002-14, 1982-41 and 1981-53.

⁹ 11 C.F.R. § 104.3(b).

¹⁰ 11 C.F.R. § 104.3(b)(4)(vi).

campaign. The Commission must hold OFA accountable for this important omission and significant violation of federal law.

II. OBAMA FOR AMERICA CONVERTED CAMPAIGN FUNDS TO SENATOR OBAMA'S "PERSONAL USE"

In violation of FECA and the Commission's regulations, OFA used campaign contributions to pay Senator Obama's personal travel expenses. Federal law prohibits any "contribution accepted by a candidate" from being "converted . . . to personal use."¹¹ The use of campaign funds is "personal" if the expense that the funds defray "would exist irrespective of the candidate's campaign or duties as a Federal officeholder."¹² To determine whether a travel expense meets this "irrespective" test, the Commission examines a candidate's activities at the travel destination.¹³ If a candidate participates in a campaign event or in "a function directly connected to bona fide official responsibilities, such as a fact-finding meeting or . . . a speech or appearance in an official capacity" at a destination, campaign funds may properly pay for the candidate's travel to and from that destination.¹⁴ Otherwise, a candidate's travel expenses would exist irrespective of his campaign or officeholder duties and must be paid from his personal funds.¹⁵ A candidate cannot transform personally paid travel into campaign-paid travel simply by conducting campaign discussions en route to a destination or by engaging in "incidental" campaign activities once at a destination.¹⁶ As the Commission has previously stated:

[I]f a candidate makes a non-political speech to a civic association luncheon, and on the way out chats with a few attendees about his upcoming campaign, that conversation would not convert the appearance into a campaign-related event.¹⁷

A candidate must therefore use personal funds to travel to any destination where he will not participate in a campaign or officeholder activity. Using campaign funds to pay for such travel is a violation of the "personal use" restrictions at 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.2(e).

¹¹ 2 U.S.C. § 439a(b). See also 11 C.F.R. § 113.2(e).

¹² 11 C.F.R. § 113.1(g).

¹³ 11 C.F.R. § 113.1(g)(1)(ii)(C) ("If a committee uses campaign funds to pay expenses associated with travel that involves both *personal activities* and *campaign or office-holder activities*, the incremental expenses that result from the personal activities are personal use. . . ."). See also 11 C.F.R. § 106.3(b)(3) ("Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable.").

¹⁴ 11 C.F.R. § 113.2(a)(1). See also Fed. Election Comm'n Adv. Op. 2005-09 at 3 (distinguishing "campaign" travel from "personal" travel based on participation in campaign and officeholder events and meetings); Fed. Election Comm'n Adv. Op. 2002-05 (allocating expenses Fed. Election Comm'n Adv. Op. 1995-20 (allowing campaign funds to defray travel because a spouse "will be directly involved in campaign-related activities."));

¹⁵ 11 C.F.R. § 113.1(g).

¹⁶ 11 C.F.R. § 106.3(b)(3) ("Campaign-related activity shall not include any incidental contacts.").

¹⁷ Fed. Election Comm'n, *The Commission's Proposed Regulations Governing Federal Elections Pursuant to Section 316(c) of the Federal Election Campaign Act of 1971 as Amended*, House Doc. 95-44, 95th Cong. 1st Sess. (1977) at 50, available at http://www.fec.gov/law/cfr/ej_compilation/1977/95-44.pdf#page=15.

OFA recently used campaign funds to pay for Senator Obama's personal travel. On October 23rd and 24th of this year, Senator Obama traveled to Hawaii to visit his sick grandmother.¹⁸ This was the right thing for any grandson to do—at his own expense—but it was not campaign activity. In Senator Obama's own words, his travels took him "off the [campaign] trail for a day."¹⁹ The trip featured no campaign events of any kind and his decision to travel was "not driven by political concerns," according to an OFA spokesperson.²⁰ Senator Obama made no speeches while in Hawaii and attended no fundraisers. Since the trip's purpose was entirely and admittedly personal, the fact that he made campaign telephone calls and talked with staff aides while on personal travel does not convert this travel into a permissible campaign expense.²¹ Senator Obama's occasion to travel therefore existed "irrespective of [his] campaign or duties as a Federal officeholder," and any campaign discussions were purely incidental to such personal travel. OFA violated the Commission's "personal use" restrictions when it paid over \$100,000 for OFA's campaign charter to fly to Hawaii without obtaining reimbursement from Senator Obama.²²

To be clear, the California Republican Party respects Senator Obama's decision to leave the campaign trail for a worthwhile personal purpose. But the Party will not quietly let "hard facts make bad law." If the Commission fails to act here, it will—contrary to explicit provisions of federal law—allow personal travel to Hawaii at campaign expense: a loophole sure to be exploited by others for less commendable personal purposes. Sympathy must not cloud the simple truth. This trip was personally important to Senator Obama, but served no campaign purpose. Its costs should have been paid with Senator Obama's own funds. The Commission must hold OFA and Senator Obama responsible for converting contributors' money to personal use.

¹⁸ Jeff Zeleny, *Obama Makes Visit to a Most Beloved Supporter*, N.Y. Times, Oct. 25, 2008, *available at* <http://www.nytimes.com/2008/10/25/us/politics/25obama.html>.

¹⁹ Agence France-Press, *Obama 'Grateful' for Support Over Sick Grandmother*, Oct. 25, 2008, *available at* <http://afp.google.com/article/ALeqM5hz1e8jLeHlIrNLXIXnXaVf0r6Ng>. *See also*, ABC Good Morning America Interview, Oct. 24, 2008 ("The nice thing is that ever since people found out that I was leaving the campaign trail for a day . . .").

²⁰ Jonathan Weisman, *Obama Cancels Campaign Events to Visit Ailing Grandmother*, Wall St. J., Oct. 21, 2008, *available at* <http://online.wsj.com/article/SB122455278869552829.html>; Dan Nakaso, *Obama's Hawaii Trip: Family Comes First*, Time Oct. 25, 2008, *available at* <http://www.time.com/time/nation/article/0,8599,1853792,00.html> (recounting Obama's visit to Hawaii).

²¹ T.W. Farnam, *Campaigns Take Different Stances on Using Private Jets*, Wall St. J., Oct. 28, 2008, *available at* <http://blogs.wsj.com/washwire/2008/10/28/campaigns-take-different-stances-on-using-private-jets/>.

²² T.W. Farnam, *Campaigns Take Different Stances on Using Private Jets*, Wall St. J., Oct. 28, 2008, *available at* <http://blogs.wsj.com/washwire/2008/10/28/campaigns-take-different-stances-on-using-private-jets/>.

III. OBAMA FOR AMERICA INTENDS TO ACCEPT AND SAUL EWING, LLP INTENDS TO MAKE AN EXCESSIVE CONTRIBUTION

In violation of FECA and the Commission's regulations, OFA intends to accept and Saul Ewing, LLP ("Saul Ewing") intends to make an excessive contribution. A partnership may only give to a candidate, and a candidate may only accept from a partnership, a contribution of up to \$2,300 for the 2008 general-election period.²³ Generally, a partnership makes a contribution to a candidate's political committee by paying "compensation for the personal services of another person if those services are rendered without charge to [the] political committee for any purpose."²⁴ A limited exception allows law firms (which are often organized as partnerships) to provide candidate committees with free legal services for FECA-compliance purposes.²⁵

A recent *New York Times* story reports that Saul Ewing will soon make an excessive contribution to OFA by providing OFA with "lawyers from nearly all of its nine offices" for OFA training and election-day tasks. According to one Saul Ewing partner who serves as a member of OFA's National Finance Committee, Saul Ewing lawyers will be "at the polls and in close proximity to the court houses" and will be "willing to go mano-a-mano" on OFA's behalf. Saul Ewing will even give its attorneys pro-bono credit for doing OFA's "voter protection work."²⁶

Because Saul Ewing's services are not for FECA-compliance purposes, Saul Ewing will make a contribution to OFA by paying its attorneys for services that the attorneys then render without charge to OFA. Saul Ewing's circumstance is nearly identical to the law firm Jenkins & Gilchrist in Advisory Opinion 2006-22. That firm asked the Commission whether it could provide pro bono services to Republican David Wallace, who was involved in election-related litigation. The Commission found that Jenkins & Gilchrist's "compensation to . . . Firm employees for the preparation of the *amicus* brief free of charge to the Wallace Committee [was] a 'contribution' . . . unless the Wallace Committee [paid] the usual and normal charge for such services in a timely manner."²⁷ Here, the Commission should similarly find Saul Ewing and OFA in violation of federal contribution limits if the "usual and normal" value of Saul Ewing's unreimbursed work for OFA exceeds \$2,300—the maximum allowable contribution by a partnership.

²³ 2 U.S.C. § 441a(a), (f) and 11 C.F.R. §§ 110.1(e), 110.9.

²⁴ 11 CFR §100.54. *See also* 2 U.S.C. § 431(8)(A)(ii), 11 CFR § 114.2(b)(1).

²⁵ 11 C.F.R. §100.86.

²⁶ Leslie Wayne, *Party Lawyers Ready to Keep an Eye on the Polls*, NY Times, Oct. 28, 2008, available at <http://www.nytimes.com/2008/10/28/us/politics/28lawyers.html>.

²⁷ Fed. Election Comm'n Adv. Op. 2006-22 at 4.

IV. VIDA FITNESS ILLEGALLY FACILITATED THE MAKING OF CONTRIBUTIONS TO OBAMA VICTORY FUND

VIDA Fitness (“VIDA”) unlawfully facilitated the making of contributions to Obama Victory Fund, a joint fundraising committee composed of Obama for America and the Democratic National Committee. Corporations are prohibited “from facilitating the making of contributions to candidates or political committees.”²⁸ Facilitation generally means “using corporate . . . resources or facilities to engage in fundraising activities in connection with any federal election.”²⁹ Commission regulations provide specific examples of unlawful “facilitation,” including fundraising activities by corporations that involve:

- “Using a corporate or labor organization list of customers, clients, vendors or others who are not in the restricted class to solicit contributions or distribute invitations to the fundraiser unless the corporation . . . receives advance payment for the market value of the list”³⁰;
- “Using meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups”;³¹ and
- “Failure to reimburse a corporation . . . within a commercially reasonable time for the use of corporate facilities . . . in connection with . . . fundraising activities.”³²

VIDA facilitated contributions to Obama Victory Fund in connection with a September 26, 2008 fundraising event.³³ First, it emailed an Obama Victory Fund fundraising-event invitation from “info@vidafitness.com” to its customer list on September 19, 2008.³⁴ 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,” meaning that VIDA illegally facilitated contributions in connection with a federal election. Second, the September 26th Obama Victory Fund event was held at VIDA’s 1515 15th Street, NW location in Washington, DC, which had not yet opened to the public or to other groups at the time. VIDA thus unlawfully facilitated contributions by allowing Obama Victory Fund to use “meeting rooms that are not customarily made available to clubs, civic or community organization or other groups.”³⁵ Finally, VIDA unlawfully facilitated contributions by allowing Obama Victory Fund to use its corporate email list and gym facilities for fundraising activities without ever collecting payment. VIDA therefore unlawfully facilitated the making of contributions to Obama Victory Fund under three separate provisions of 11 C.F.R. § 114.2(f).

²⁸ 11 C.F.R. § 114.2(f)(1).

²⁹ 11 C.F.R. § 114.2(f)(1).

³⁰ 11 C.F.R. § 114.2(f)(2)(i)(C).

³¹ 11 C.F.R. § 114.2(f)(2)(i)(D).

³² 11 C.F.R. § 114.2(f)(2)(i)(B).

³³ Anne Schroeder Mullins, The Politico, Shenanigans Blog (Sept. 26, 2008 15:30ET), *available at* http://www.politico.com/blogs/anneschroeder/0908/Sarah_Jessica_Parker_in_town_tonight_for_Obama.html (indicating that David von Storch, VIDA Fitness’s owner is an Obama supporter).

³⁴ Attached hereto as Exhibit 1.

³⁵ Anne Schroeder Mullins, The Politico, Shenanigans Blog (Sept. 26, 2008 15:30ET), *available at* http://www.politico.com/blogs/anneschroeder/0908/Sarah_Jessica_Parker_in_town_tonight_for_Obama.html.

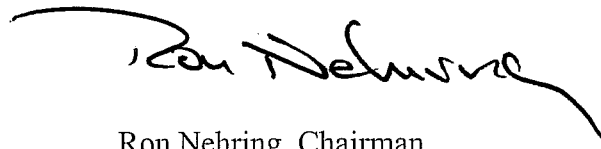
V. **VIDA FITNESS MADE AND OBAMA VICTORY FUND KNOWINGLY ACCEPTED AN UNLAWFUL CORPORATE CONTRIBUTION**

VIDA made and Obama Victory Fund knowingly accepted a corporate contribution. Corporations are prohibited from making contributions and candidates are prohibited from “knowingly accepting or receiving” corporate contributions.³⁶ A corporation makes a “contribution” if it provides goods or services to a candidate “at a charge that is less than the usual and normal charge.”³⁷ As mentioned above, VIDA allowed Obama Victory Fund to use its email list and its facilities in connection with a September 26, 2008 fundraiser. Because VIDA’s owner is a supporter of Senator Obama, VIDA has never charged and Obama Victory Fund has never paid for these services.³⁸ VIDA and Obama Victory Fund have thus violated federal corporate-contribution prohibitions by knowingly exchanging services at less than the usual and normal charge.

VI. **CONCLUSION**

For the reasons stated above, the California Republican Party (1201 K Street, Suite 740, Sacramento, CA 95814 and 1903 W. Magnolia Boulevard, Burbank, CA 91506) files this complaint against Obama for America (PO Box 8102 Chicago, IL 60680), Saul Ewing, LLP (2600 Virginia Avenue NW Suite 1000, Washington, DC 20037), Obama Victory Fund (430 S. Capitol Street SE, Washington, DC 20003), and VIDA Fitness (1515 15th St NW, Washington, DC 20005). The California Republican Party requests that the Commission immediately investigate these parties’ misconduct.

Respectfully Submitted,



Ron Nehring, Chairman

³⁶ 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(b), (d).

³⁷ 11 C.F.R. § 100.52(d).

³⁸ Anne Schroeder Mullins, The Politico, Shenanigans Blog (Sept. 26, 2008 15:30ET), *available at* http://www.politico.com/blogs/anneschroeder/0908/Sarah_Jessica_Parker_in_town_tonight_for_Obama.html (quoting VIDA owner David von Storch: “I was at the Democratic National Convention and I was talking with the members of the Gay and Lesbian Leadership Council about what we can do to increase awareness and to get the younger generation more involved and connected to the political process – so I said I have these great spaces in D.C. and they came back and said ‘What do you think of Sarah Jessica Parker?’ and I said, ‘YEAH! Hello!’ And that’s the story.”).

State of California

County of Sacramento

Subscribed and sworn to (or affirmed) before me on this 3rd day of
November, 2008, by Ron Nehring, proved to me on the
basis of satisfactory evidence to be the person(s) who appeared before me.

(seal)



Signature Shannon Diaz

EXHIBIT 1

From: info@vidafitness.com

Subject: Get Political with Sarah Jessica Parker

Date: Fri, 19 Sep 2008

If you are having problems viewing this email, click here to view it on our web site.

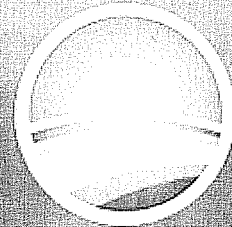


OBAMA

A Sneak Preview Reception With

Sarah Jessica Parker

Benefiting the Obama Victory Fund



OBAMA
PRIDE

Friday, September 26, 2008

VIDA Fitness

1515 15th Street, NW Washington, DC

6:00 PM – 8:00 PM

Host Committee: \$2,500

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

Supporter: \$250 per person

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

To R.S.V.P. please visit:

<https://donate.barackobama.com/page/contribute/DCSJP>

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

If you have any questions, or would like additional information, please contact Thomas Petrillo @ 202-488-5015 or at petrillot@dnc.org RSVP by fax to 202-572-7917

Paid for by Obama Victory Fund, a joint fundraising committee authorized by Obama for America and the Democratic National Committee.
VIDA and Bang do not endorse nor support any political candidate, but do encourage their members and friends to get involved and participate in the electoral process.