

March 13, 2013

The Honorable Barack Obama  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW

Dear President Obama:

Democracy 21 and the Campaign Legal Center believe that your involvement with Organizing for Action (OFA) raises serious questions about whether you are complying with the Ethics in Government Act ban on the solicitation of gifts by executive branch officials, including the President.

According to published reports, OFA is a privately-funded entity that has been created by you, by former top officials in your White House and by top political associates from your presidential campaign. OFA has been fully embraced by you. According to published reports, you will help direct OFA and will be “intimately involved in” its activities. OFA reportedly is running your Twitter account and Facebook page.<sup>1</sup>

While claiming status as a tax-exempt section 501(c)(4) “social welfare” organization, OFA is operating, in essence, as an arm of your presidency to advance your policy agenda.

At the same time, OFA is soliciting large contributions from individual donors and enlisting bundlers to raise large sums in your name and on your behalf. According to published reports, bundlers will receive perks in return for raising at least \$500,000 each.

OFA creates the opportunity for its donors and bundlers to exercise corrupting influence over your administration’s policies and decisions. At a minimum, it creates the appearance of such corrupting influence.

Federal gift rules prohibit executive branch officials from receiving or soliciting gifts from “prohibited sources,” *i.e.*, donors who have interests that may be substantially affected by your administration’s decisions and policies. While the President is exempt from the prohibition on receiving gifts, the President is covered by the prohibition on soliciting gifts.

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<sup>1</sup> M. Gold, “Pro-Obama group wades into budget standoff,” *Los Angeles Times* (Feb. 27, 2013).

The ban on soliciting gifts applies to gifts solicited by you directly or indirectly, including donations solicited by you, other than campaign contributions.

It appears that the efforts you have undertaken on behalf of OFA are an indirect solicitation of funds by you for the organization you helped create. As discussed below, these efforts include your statements announcing the formation of OFA and endorsing the work of the organization, your statements seeking support for the organization and your participation in donor events for OFA.

To the extent these efforts by you on behalf of OFA involve potential donors who have interests that may be substantially affected by your administration's decisions and policies, *i.e.*, "prohibited sources," they raise serious questions about whether you are complying with the ban on the solicitation of gifts by executive branch officials.

Furthermore, while the President is exempt from the statutory ban on the receipt of gifts by executive branch officials, the reasons for this exemption have no application to the donations being provided to OFA, which is functioning on your behalf and as an arm of your presidency. Thus, we believe your involvement with OFA raises serious questions about whether your activities are consistent with the purpose and spirit of the ban on the receipt of gifts by executive branch officials.

OFA is an unprecedented organization. No president has ever before helped create and been involved in this kind of privately-funded entity. While there have been a few instances where national political parties established section 501(c)(4) tax-exempt groups to help support their agendas, these groups were terminated relatively quickly. In any event, these groups did not function as an arm of the presidency.

On your first day in office, you issued an executive order to prohibit executive branch appointees from accepting gifts from those attempting to influence government policy.<sup>2</sup> At the time, you said the executive order would make "a clean break from business as usual."<sup>3</sup> As you begin your second term in office, your involvement in OFA represents anything but "a clean break from business as usual."

Democracy 21 and the Campaign Legal Center believe that it is in the best interests of the country and the presidency for OFA to be ended. We urge you to take all steps necessary to shut down OFA.

### **The Creation of OFA**

On January 18, 2013, you announced the launch of Organizing for Action.

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<sup>2</sup> Exec. Order No. 13490, 74 Fed. Reg. 4673 (Jan. 21, 2009).

<sup>3</sup> "Remarks by the President in Welcoming Senior Staff and Cabinet Secretaries to the White House" (Jan. 21, 2009), at <http://www.whitehouse.gov/the-press-office/remarks-president-welcoming-senior-staff-and-cabinet-secretaries-white-house>

Your personal involvement in OFA was clear from the announcement and the structure of the new organization, which is a direct outgrowth of your 2012 presidential re-election campaign.

As an article in *The Los Angeles Times* noted, a decision was made “to roll [the Obama] campaign into a 501(c)(4) organization that will take unlimited contributions. . . .”<sup>4</sup>

A story on CNN stated that Obama for America, your reelection campaign, “will transform into a non-profit, tax-exempt group that will attempt to leverage the re-election campaign’s powerful grassroots organization and social media operation, as well as its rich voter database and vast email distribution list, to build up public support for the president. . . .”<sup>5</sup>

The OFA website states that OFA “will draw in part on the network, technology and volunteers that distinguished the President's successful re-election effort,” and “will lease and buy assets from Obama for America as the re-election committee retires its debt and prepares to terminate.”<sup>6</sup>

According to a report in *Politico*, OFA “grew directly out of the president’s campaign. It uses the campaign's former web address, [www.barackobama.com](http://www.barackobama.com), its email list of supporters, and it is being run by former campaign manager Jim Messina.”<sup>7</sup> An article in *The Los Angeles Times* said that OFA “runs Obama’s Twitter account and Facebook page.”<sup>8</sup>

You have closely identified yourself with OFA and OFA with your presidency.

You sent an email on January 18, 2013 “announcing and endorsing the new group to the 20-million-plus addresses on the highly-coveted e-mail list developed by [the Obama] campaign and the DNC.”<sup>9</sup> That email said that OFA “will work to turn our shared values into legislative action.”

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<sup>4</sup> M. Gold, “Pro-Obama Group says it’s not partisan, but has wide latitude,” *The Los Angeles Times* (Feb. 7, 2013).

<sup>5</sup> P. Steinhauser, “‘Obama for America’ to morph into ‘Organizing for Action,’” *CNN* (Jan. 18, 2013).

<sup>6</sup> <http://www.barackobama.com/faq?source=footer-nav> (last visited March 11, 2013).

<sup>7</sup> D. Slack, “Obama doing OFA call after State of the Union,” *Politico* (Feb. 11, 2013).

<sup>8</sup> M. Gold, “Pro-Obama group wades into budget standoff,” *Los Angeles Times* (Feb. 28, 2013).

<sup>9</sup> J. Gerstein, “President Obama’s OFA has Ronald Reagan, Bill Clinton echoes,” *Politico* (Feb. 3, 2013).

The email announcing the formation of OFA included a video by First Lady Michelle Obama that explained the launch of OFA and encouraged support for it.<sup>10</sup> The video by the First Lady remains on the OFA website. The OFA website states that it “has been grateful for the expression of support for its work by the President, Vice President and First Lady,” and that it will “work hard to retain the support and confidence of the President by effectively advocating for his Administration’s core agenda.”<sup>11</sup>

OFA is being managed and operated by many of your closest associates, including former White House staff officials, political advisers and former top campaign operatives. Jim Messina, the manager of your 2012 campaign and your former White House Deputy Chief of Staff is the national chairman of OFA. The organization is being run “by former White House official Jon Carson,”<sup>12</sup> who most recently served as director of the White House Office of Public Engagement.

As an article in *Politico* stated about OFA:

The group’s board will include a host of former Obama staffers, an Obama campaign aide said Friday. Along with Messina will be Obama campaign and White House alumni Stephanie Cutter, Robert Gibbs, Jennifer O’Malley-Dillon, Julianna Smoot and Erik Smith. Senior adviser David Plouffe will also join when he leaves the White House later this month.<sup>13</sup>

Published reports indicate you will play a leading role in OFA. According to one report, OFA chairman Jim Messina, “told Democratic donors on inauguration weekend that Obama will help direct the new group. ‘The president will be intimately involved,’ Messina reportedly said.”<sup>14</sup>

According to a report in *Politico*, you sent an email to your supporters immediately after your second Inauguration that “encouraged them to get involved in his new nonprofit group Organizing for Action,” stating:

I just renewed my oath of office to serve as your president for four more years.

Thank you for making this possible. It’s an honor to be your president.

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<sup>10</sup> The video initially concluded with a disclaimer that stated “Paid for by Obama for America,” (the reelection campaign) though this has since been deleted.

<sup>11</sup> <http://www.barackobama.com/faq?source=footer-nav> (last visited March 11, 2013).

<sup>12</sup> M. Gold, “Pro-Obama Group says it’s not partisan, but has wide latitude,” *The Los Angeles Times* (Feb. 7, 2013).

<sup>13</sup> G. Thrush *et al.*, “Obama unveils Organizing for Action,” *Politico* (Jan. 17, 2013).

<sup>14</sup> J. Gerstein, “President Obama’s OFA has Ronald Reagan, Bill Clinton echoes,” *Politico* (Feb. 3, 2013).

Now it's time to finish what we started – let's get going.

Barack

P.S. -- Organizing for Action is the next step in our grassroots movement and will be crucial to finishing what we started. If you haven't already, say you'll be part of it.<sup>15</sup>

It has been reported that you participated in a conference call with volunteers for OFA following your State of the Union Address.<sup>16</sup> According to a transcript of this call, you said:

And wherever you are, I just want you all to remember, it's people like you who are going to help us actually realize the vision I talked about tonight. That's why you're the first phone call I'm making on the way back to the White House.

Back on Election Day I talked about how a win was a vote for action and not politics as usual. And you know me well enough to know what that means for you and what that means for me. It means that we've got to get organized. And that's what Organizing for Action is all about. So, working together, we've got to make the change that we talked about.

### **Fundraising by OFA**

OFA has announced it will not restrict the size of the donations it accepts. OFA also does not have a policy to reject gifts from “prohibited sources” as defined by executive branch gift rules – *i.e.*, gifts from those that have matters that may be substantially affected by the policies and actions of your administration. OFA initially set forth the following donations policy on its website:

OFA will not accept donations from individuals registered as lobbyists or foreign agents, political action committees, or foreign nationals, including foreign governments or foreign political parties. It will welcome support from all other supporters of its work. As a nonprofit organization organized for this social welfare purpose, it may accept donations of any size from those eligible to give.<sup>17</sup>

On March 7, 2013, OFA changed its policies by stating that it will not accept corporate contributions. In an op-ed, OFA chairman Messina said, “We have now decided not to accept contributions from corporations, federal lobbyists or foreign donors.”<sup>18</sup>

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<sup>15</sup> B. Tau, “Obama thanks supporters, directs them to new nonprofit,” *Politico* (Jan. 21, 2013).

<sup>16</sup> R. Epstein, “Obama calls supporters, introduces #jobsnow,” *Politico* (Feb. 12, 2013).

<sup>17</sup> <http://www.barackobama.com/faq?source=footer-nav> (emphasis added).

<sup>18</sup> J. Messina, “Why we're raising money to support Obama agenda,” *CNN.com* (March 7, 2013).

OFA will continue to solicit large individual contributions and enlist bundlers to raise large amounts of money for the organization. An article in *Politico* stated that OFA:

...has quietly sought support from the same rich donors who backed Obama's campaigns, asking for help from Democratic donors and bundlers in town for the Inauguration at a closed-door corporate-sponsored confab. . . .

Jim Messina, Obama's 2012 campaign manager and the Organizing for Action national chairman, and OFA Director Jon Carson, pleaded with invited big donors to support the new group. "We need you. This president needs you," Messina said, adding Organizing for Action was "building a national advisory board filled with people in this room."<sup>19</sup>

According to another article in *Politico*, a Democratic official said that "President Barack Obama may personally fundraise on behalf of [OFA]."<sup>20</sup> Published reports indicate that you plan to participate personally in OFA events:

The next step in converting Obama's election apparatus to grass-roots lobbying is a "founders summit" March 13 that includes a \$50,000-per person meeting at the Jefferson hotel in Washington led by Messina and Carson. Those planning to attend said they hope the president will be part of the day's agenda, though the White House and OFA declined to comment on that possibility.<sup>21</sup>

An article in *Politico* stated:

President Obama will speak to a Wednesday night dinner for donors and grassroots supporters at the "founders' summit" of Organizing for Action, the nonprofit successor organization to his campaign, officials said.<sup>22</sup>

Published reports have indicated that perks will be provided to individuals who bundle \$500,000 or more for OFA, and that those benefits may include special access to you.

<sup>19</sup> K. Vogel *et al.*, "Barack Obama's new 'grass-roots' group isn't quite," *Politico* (Jan. 25, 2013).

<sup>20</sup> B. Tau, "Obama adopts secret cash strategy," *Politico* (Jan. 18, 2013)

<sup>21</sup> T. Hamburger, "Obama's new political group to lure unlimited donations," *The Washington Post* (Feb. 24, 2013).

<sup>22</sup> M. Allen, "President Obama to speak to Organizing for Action Wednesday," *Politico* (March 11, 2013).

A report in *The Los Angeles Times* said that the leaders of OFA “are courting top campaign bundlers to be part of a high-dollar fundraising network that will help finance the work of the nascent organization.”<sup>23</sup> According to this report:

Bundlers will probably be asked to raise \$500,000 to be part of the [OFA finance] committee. Such top fundraisers will get perks in return. One reward that was floated as a possibility was an invitation to quarterly meetings with Obama.<sup>24</sup>

A story in *The Washington Post* made the same point, noting that Messina and Carson “have suggested \$500,000 as a target level for OFA bundlers and that top donors get invitations to quarterly OFA board meetings attended by the President.”<sup>25</sup>

According to *The New York Times*:

Giving or raising \$500,000 or more puts donors on a national advisory board for Mr. Obama’s group and the privilege of attending quarterly meetings with the president, along with other meetings at the White House. Moreover, the new cash demands on Mr. Obama’s top donors and bundlers come as many of them are angling for appointments to administration jobs or ambassadorships.<sup>26</sup>

According to *The New York Times*, “At least half of the group’s budget will come from a select group of donors who will each contribute or raise \$500,000 or more, according to donors and strategists involved in the effort.”<sup>27</sup>

In his March 7 op-ed, OFA chairman Jim Messina wrote:

Whether you’re a volunteer or a donor, we can’t and we won’t guarantee access to any government officials. But just as the president and administration officials deliver updates on the legislative process to Americans and organizations across the ideological spectrum, there may be occasions when members of Organizing for Action are included in those updates.<sup>28</sup>

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<sup>23</sup> M. Gold, “Obama advocacy group OFA solicits high-dollar bundlers for support,” *The Los Angeles Times* (Feb. 14, 2013).

<sup>24</sup> *Id.*

<sup>25</sup> T. Hamburger, “Obama’s new political group to lure unlimited donations,” *The Washington Post* (Feb. 24, 2013) (emphasis added).

<sup>26</sup> N. Confessore, “Obama’s backers seek big donors to press agenda,” *The New York Times* (Feb. 22, 2013) (emphasis added).

<sup>27</sup> *Id.*

<sup>28</sup> J. Messina, “Why we’re raising money to support Obama agenda,” *CNN.com* (March 7, 2013).

This statement by Mr. Messina may represent his backing away from the idea that donors and bundlers who provide large sums to OFA will get access to you as a result of the funds they provide. But his statement is not clear in this regard, and it is not inconsistent with a plan for OFA donors and bundlers of large amounts to be provided with the opportunity to attend meetings with you.

The February 14 *Los Angeles Times* article cited above also provided details on the contribution disclosures initially planned by OFA. As an organization claiming status as a section 501(c)(4) organization, OFA is not obligated by law to publicly disclose its donors. On its website, however, OFA represented that it “will make full and regular disclosures over the course of the year of donations received.”<sup>29</sup> However, according to the article in the *Los Angeles Times*:

Messina and Carson told attendees that the group would disclose donors on a quarterly basis, although the organization is not required to do so. Exact contributions will not be listed; rather, donors will be listed under different ranges of contributions.<sup>30</sup>

In his March 7 op-ed, Mr. Messina indicated that the original disclosure policy had also been changed and that OFA will now disclose all donors over \$250 and the amount contributed by each on a quarterly basis.<sup>31</sup>

While the policy changes set forth in Mr. Messina’s March 7 op-ed are appropriate and welcome steps that eliminate corporate contributions and provide for better disclosure, they do not solve the fundamental problems created by your involvement with OFA.

OFA remains an unprecedented entity that allows individual donors and bundlers to provide large amounts of money to an organization functioning as an arm of your presidency. Large amounts provided to OFA create opportunities for individual donors and bundlers to buy corrupting influence over your administration's policies and decisions. At a minimum, large amounts provided to OFA create the appearance of such corrupting influence.

### **Rules on Gifts to Executive Branch Officials**

The statutory governmental gift ban, enacted as part of the Ethics Reform Act of 1989, states:

[N]o Member of Congress or officer or employee of the executive, legislative, or judicial branch shall solicit or accept anything of value from a person—

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<sup>29</sup> <http://www.barackobama.com/faq?source=footer-nav> (last visited March 11, 2013).

<sup>30</sup> M. Gold, “Obama advocacy group OFA solicits high-dollar bundlers for support,” *The Los Angeles Times* (Feb. 14, 2013).

<sup>31</sup> J. Messina, “Why we’re raising money to support Obama agenda,” CNN.com (March 7, 2013).

- (1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by, the individual's employing entity; or
- (2) whose performance may be substantially affected by the performance or nonperformance of the individual's official duties.

5 U.S.C. § 7353(a).

The Office of Government Ethics (OGE) has issued executive branch gift rules to implement the statutory gift prohibition. These rules state that an employee of the executive branch:

. . . shall not, directly or indirectly, solicit or accept a gift:

- (1) From a prohibited source; or
- (2) Given because of the employee's official position.

5 C.F.R. § 2635.202(a). A "prohibited source" is defined to mean any person who:

- (1) Is seeking official action by the employee's agency;
- (2) Does business or seeks to do business with the employee's agency;
- (3) Conducts activities regulated by the employee's agency;
- (4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
- (5) Is an organization a majority of whose members are described in paragraphs (d)(1) through (d)(4).

*Id.* § 2635.203(d).

For purposes of the gift rule, the term "gift" is defined broadly to include "any gratuity, favor, discount, loan, forbearance, or other item having monetary value," *id.* § 2635.203(b), although it does not include campaign contributions.

The prohibitions in the gift rules apply to gifts that are "directly or indirectly" solicited or accepted. The rules state that a gift "which is solicited or accepted indirectly includes a gift . . . [g]iven to any other person, including any charitable organization, on the basis of designation, recommendation or other specification by the employee. . . ." *Id.* § 2635.203(f)(2).

The President and Vice President are exempted from the ban on accepting gifts, although not from the ban on soliciting gifts, for reasons that are not applicable in the case of the donations being made to OFA.

According to the gift rules:

(j) *Gifts to the President or Vice President.* Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate § 2635.202(c)(1) or (2), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.

*Id.* § 2635.204(j). This provision means that the exemption from the gift ban for the President does not apply if the acceptance of the gift is “in return for being influenced in the performance of an official act,” *id.* § 2634.202(c)(1), or if the President “solicit[s] or coerce[s] the offering of a gift,” *id.* § 2634.202(c)(2), or if the gift is in violation of the bribery or gratuities laws, 18 U.S.C. § 201.

A recent report by the Congressional Research Service summarizes the gift rules as applied to the President:

[T]he President is generally free to accept unsolicited personal gifts from the American public. Most of the restrictions of federal officials accepting gifts from “prohibited sources” (those doing business with, seeking action from, or regulated by one’s agency) are *not* applicable to the President of the United States (5 C.F.R. § 2635.204(j)), although the President may not solicit gifts from such sources.

J. MASKELL, CRS REPORT R42662, GIFTS TO THE PRESIDENT OF THE UNITED STATES, (Aug. 16, 2012), at ii (italics in original; underlining added).

### **Executive Branch Ban on Solicitation of Gifts**

The executive branch gift rules prohibit the direct or indirect “solicitation” of gifts by the President.

There are strong policy reasons to restrict the solicitation of gifts by the President. As the Supreme Court said in the analogous context of a provision that bars solicitation of soft money contributions for political parties by federal officeholders:

Large soft-money donations at a candidate’s or officeholder’s behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder. Though the candidate may not ultimately control how the funds are spent, the value of the donation to the candidate or officeholder is evident from the fact of the solicitation itself.

*McConnell v. FEC*, 540 U.S. 93, 182 (2003).

Justice Anthony Kennedy, who voted to strike down virtually all of the other restrictions on political party soft money at issue in the *McConnell* case, supported the ban on solicitation of soft money by federal officeholders. Justice Kennedy said:

The making of a solicited gift is a *quid* both to the recipient of the money and to the one who solicits the payment (by granting his request). Rules governing candidates' or officeholders' solicitation of contributions are, therefore, regulations governing their receipt of *quids*. This regulation fits under *Buckley's* anticorruption rationale.

540 U.S. at 308.

In other words, the solicitation of large sums by a federal officeholder creates opportunities for corrupting influence over government decisions and policies and the appearance of such corrupting influence.

The executive branch ethics rules cover both “direct” and “indirect” solicitations. 5 C.F.R. § 2635.202(a). The rules make clear that the “indirect” solicitation of a gift includes a gift given to “any other person, including any charitable organization, on the basis of designation, recommendation or other specification by the employee. . . .” *Id.* 2635.203(f)(2).<sup>32</sup>

To the same effect, and again in an analogous context, the rules of the Federal Election Commission define the term “solicit” for purposes of the ban on the solicitation of soft money by federal officeholders. That definition states that “solicit” means:

. . . to ask, request, or recommend, explicitly or implicitly, that another person made a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation is an oral or written communication that, construed as reasonably understood in the context in which it was made, contains a clear message asking, requesting or recommending that another person make a contribution. . . . A solicitation may be made directly or indirectly.

11 C.F.R. § 300.2(m) (emphasis added).

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<sup>32</sup> The Bipartisan Campaign Reform Act (BCRA) permits federal candidates and officeholders to make a “general solicitation of funds” for a section 501(c) organization that does not have a “principal purpose” to conduct certain election activities. 2 U.S.C. § 441i(e)(4). This provision does not purport to preempt the more specific language in the Ethics in Government Act that prohibits solicitations by government officers of gifts from “prohibited sources.” The provision also does not permit a federal officeholder to solicit gifts for a non-profit group which, like OFA, is operating in the name of and on behalf of the federal officeholder making the solicitation. OFA is functioning as an arm of the Obama presidency.

In your email announcement of the creation of OFA, you said the organization will be “crucial to finishing what we started” and you urged your supporters to “say you’ll be part of it.” After the recent State of the Union address, you participated in a conference call to OFA supporters and told them that “we’ve got to get organized. And that’s what Organizing for Action is all about.” It appears clear that you consider OFA to be an arm of your presidency to advance your policy agenda.

“Reasonably understood in context,” your efforts on behalf of OFA appear to be an indirect solicitation of funds for OFA, directed to your campaign supporters and financial backers. Your comments and other activities are reasonably understood to be seeking funds for OFA to conduct work that you consider “crucial” to your administration.

In the context of the circumstances surrounding the creation and functioning of OFA, your comments and activities constitute a “designation” or “recommendation” of OFA that appears to fall within the proscription of an “indirect” solicitation. *Id.* § 2635.203(f)(2).

Furthermore, no apparent effort is being made to exclude “prohibited sources” from the solicitation of donations for OFA, defined as persons who have interests that may be substantially affected by your administration’s decisions and policies.

Given these circumstances, we believe that serious questions exist about whether you are complying with the prohibition against soliciting gifts in the Ethics in Government Act.

### **Executive Branch Ban on Receipt of Gifts**

While you are exempt from the ban on the receipt of gifts by executive branch officials, the large donations being raised by OFA in your name and on your behalf contravene the spirit and purpose of this ban.

OFA is imposing no limits on the size of the individual donations it receives and is enlisting individuals to bundle large sums, including amounts of \$500,000 or more each.

OFA has not stated any policy to reject donations from “prohibited sources” as defined by the executive branch gift rules, including from those who have “interests that may be substantially affected by” administration decisions and policies. 5 C.F.R. § 2635.203(d)(4).<sup>33</sup>

Published reports have indicated that large donors and bundlers of large amounts will get “perks in return” for the contributions they provide to OFA,<sup>34</sup> and that one of these perks may be special access to you.

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<sup>33</sup> While the OFA website states that OFA will not accept donations “from individuals registered as lobbyists,” it does not state it will reject donations from “lobbying organizations” or from the clients represented by lobbyists.

<sup>34</sup> M. Gold, “Obama advocacy group OFA solicits high-dollar bundlers for support,” *The Los Angeles Times* (Feb. 14, 2013).

When the Supreme Court in the *McConnell* case considered the question of “whether large *soft money* contributions to national party committees can have a corrupting influence or give rise to the appearance of corruption,” the Court said the answer was a matter of “common sense”:

Under this system, corporate, union, and wealthy individual donors have been free to contribute substantial sums of soft money to the national parties, which the parties can spend for the specific purpose of influencing a particular candidate’s federal election. It is not only plausible, but likely, that candidates would feel grateful for such donations and that donors would seek to exploit that gratitude.

540 U.S. at 145.

If you substitute “OFA” for “the national parties,” and if you substitute “promoting the President’s legislative agenda” for “influencing a particular candidate’s federal election,” the Court’s position also reflects the threat of government corruption posed by large individual contributions to OFA, which functions as an arm of the presidency. The executive branch gift rules are designed to prevent this kind of threat of corruption.

As President you are exempt from the executive branch ban on the receipt of gifts from prohibited sources. The purpose of that exemption, however, is not applicable to donations to OFA.

The principal reason for exempting the President from the general executive branch ban on accepting gifts is because “the ceremonial and other public duties of the President and Vice President make it impractical to subject them to standards that require analysis of every gift offered.” *Standards of Ethical Conduct for Employees of the Executive Branch*, 56 Fed. Reg. 33778 (July 22, 1991).

As the CRS Report cited earlier explains, the exemption for the President from the gift rules is based on “the exigencies of the office and considerations of protocol, courtesy and etiquette. . . .”

This reason for exempting the President from the gift ban is not applicable in the case of the donations being raised by OFA. We therefore believe that the acceptance of donations by OFA on your behalf contravenes the spirit and purpose of the gift ban.

## **Conclusion**

There are multiple factors that support the conclusion that OFA is a private-sector arm of your presidency:

- You have been personally involved in the creation and public announcement of OFA and in the promotion of OFA to your campaign supporters and the public.

- You have personally endorsed and embraced the work of OFA, which you have said is important to “finishing the job” started by your first term.
- You intend to appear at and participate in OFA events that will be attended by OFA’s large donors and bundlers, including the “founders’ summit.”
- OFA was also created, and is being operated, by former top White House officials in your Administration and by your close political associates and former campaign operatives.
- OFA is a direct outgrowth of your 2012 presidential campaign, and reportedly, by purchase or lease, will become the beneficiary of key assets of your 2012 presidential campaign, including voter database information and email distribution lists.
- OFA Chairman Jim Messina reportedly has stated that you will help direct OFA and will be “intimately involved” in its operations.
- OFA is managing your Twitter account and Facebook page.

For the reasons set forth in our letter, serious questions exist about whether your involvement with OFA complies with the statutory ban on the solicitation of gifts by a President. Serious questions also exist about whether your role in OFA complies with the spirit and purpose of the ban on the receipt of gifts by a President.

Democracy 21 and the Campaign Legal Center urge you to shut down OFA.

Respectfully,

/s/ J. Gerald Hebert

/s/ Fred Wertheimer

J. Gerald Hebert  
Executive Director  
Campaign Legal Center

Fred Wertheimer  
President  
Democracy 21