

**BEFORE THE
FEDERAL ELECTION COMMISSION**

End Citizens United
P.O. Box 66005
Washington, DC 20035

Complainant,

v.

Representative Martha McSally
McSally for Senate, Inc.
McSally for Congress
Paul Kilgore, Treasurer of McSally for Senate, Inc. and McSally for Congress
P.O. Box 19128
Tucson, AZ 85731

Respondents.

COMPLAINT

Complainant files this complaint under 52 U.S.C. § 30109(a)(1) against Representative Martha McSally, McSally for Senate, Inc., McSally for Congress, and Paul Kilgore as treasurer of McSally for Congress and McSally for Senate, Inc., for violating the Federal Election Campaign Act of 1971, as amended (“the Act”) and Federal Election Commission (“FEC” or “Commission”) regulations.

The record demonstrates that Representative McSally is running for Senate, while raising funds for a non-existent House candidacy under a separate limit. In January 2018, Representative McSally became a candidate for the United States Senate and set up a new principal campaign committee, McSally for Senate, Inc. However, she kept raising and spending funds through McSally for Congress, the principal campaign committee set up to support her candidacy for the House of Representatives. In a clear violation of the rules governing dual candidacy, she also transferred nearly a million dollars from McSally for Congress to McSally

for Senate, Inc. The Commission must immediately investigate this matter and stop Representative McSally from illegally accepting funds under a separate limit.

FACTS

Representative McSally is a Member of Congress from Arizona's Second Congressional District. Her House principal campaign committee is McSally for Congress.¹ Representative McSally filed a Statement of Candidacy on November 23, 2016 declaring her 2018 candidacy for the House of Representatives in Arizona's Second Congressional District.² Then, on January 11, 2018, Representative McSally filed a Statement of Candidacy for the United States Senate in Arizona, designating McSally for Senate, Inc. as her principal campaign committee.³ Representative McSally proceeded to raise funds into, and spend funds from, McSally for Senate, Inc in support of her Senate candidacy.⁴ However, Representative McSally simultaneously continued to raise and spend funds from McSally for Congress.⁵ While the public record shows no other formal action by Representative McSally to abandon her House candidacy, there is no evidence Representative McSally is really running for re-election to the House.

¹ See McSally for Congress, Committee ID C00512236, <https://www.fec.gov/data/committee/C00512236/>.

² See Exhibit A, FEC Form 2, Statement of Candidacy for the House of Representatives in Arizona's Second Congressional District.

³ See Exhibit B, FEC Form 2, Statement of Candidacy for the United States Senate in Arizona.

⁴ See Exhibit C, cover pages for McSally for Senate, Inc's April Quarterly Report, which disclose total receipts and expenditures from January 1, 2018 to March 31, 2018.

⁵ See Exhibit D, cover pages for McSally for Congress' April Quarterly Report, which disclose total receipts and expenditures from January 1, 2018 to March 31, 2018.

LEGAL ARGUMENT

A. The public record suggests that Representative McSally is maintaining a sham campaign for the House, so that she can raise money under an additional limit to her Senate campaign.

The Act and Commission regulations require every federal candidate to designate a principal campaign committee to serve as the vehicle through which funds will be raised and spent in support of their candidacy.⁶ A candidate may not designate a principal campaign committee for multiple candidacies; a principal campaign committee must support an individual's efforts to seek one specific, designated office.⁷ An individual designates the specific candidacy that a principal campaign committee supports on the FEC Form 1, Statement of Organization that is publicly filed with the Commission.⁸ A federal candidate can then accept up to \$2,700 per election from an individual and up to \$5,000 per election from a federal multicandidate PAC.⁹ This single contribution limit applies to all funds raised by the candidate in support of her candidacy.¹⁰

In order to make sure candidates understand these requirements, the FEC publishes easily accessible, plain language guidance on its website that covers topics such as how to register as a new candidate and the rules on taking in receipts and making disbursements.¹¹ This guidance plainly states, for example, that “Federal candidates must designate a principal campaign committee . . . [t]his campaign committee takes in contributions and makes expenditures for the candidate's campaign” and that “[a]uthorized committees *take in all receipts for a candidate's*

⁶ 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

⁷ 11 C.F.R. § 102.12(b).

⁸ See FEC Form 1, Statement of Organization, available at <https://transition.fec.gov/pdf/forms/fecfrm1.pdf>.

⁹ 52 U.S.C. § 30116(a); 11 C.F.R. §§ 110.1(b); 110.2(b).

¹⁰ 11 C.F.R. §§ 110.1(b); 110.2(b).

¹¹ See Federal Election Commission, “Candidates and their authorized committees,” available at <https://www.fec.gov/help-candidates-and-committees/guides/?tab=candidates-and-their-authorized-committees>.

campaign.”¹² The FEC even publishes a video that re-emphasizes, with visual examples, how to properly handle candidate and committee registration.¹³

However, the record demonstrates that Representative McSally is raising and spending funds through *two* committees to support her Senate candidacy. One purports to support her “candidacy” for the House of Representatives. In reality, however, that committee is raising funds for use in her Senate campaign -- as is shown by its illegal transfer of nearly a million dollars to the Senate campaign.

B. Representative McSally appears to have illegally transferred nearly a million dollars from McSally for Congress to McSally for Senate, Inc.

Commission filings show that, on January 22, 2018 Representative McSally transferred \$140,000 from McSally for Congress to McSally for Senate, Inc. and then on February 13, 2018 transferred an additional \$832,498.97 from McSally for Congress to McSally for Senate.¹⁴ This adds up to nearly a million dollars moved from the House committee to the Senate committee.

Even if Representative McSally’s House campaign was bona fide, FEC regulations prohibit transfers between principal campaign committees when a candidate is seeking multiple offices.¹⁵ A House candidate who decides to run instead for Senate may transfer funds to the Senate campaign only when she stops actively seeking multiple offices.¹⁶ This happens when the individual: (i) publicly announces that she will no longer seek nomination or election to that office and ceases to conduct campaign activities with respect to that election, except to retire net

¹² See Federal Election Commission, “Registering as a candidate,” available at <https://www.fec.gov/help-candidates-and-committees/registering-candidate/>; Federal Election Commission, “Taking in receipts,” available at <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/> (emphasis added).

¹³ See Federal Election Commission, “Video on Candidate Registration 2017-18,” available at <https://www.youtube.com/watch?v=AcJ52LuEhEw>.

¹⁴ See Exhibit E, relevant pages from McSally for Senate, Inc’s April Quarterly report listing the transfers.

¹⁵ 11 C.F.R. § 110.8(d).

¹⁶ *Id.* § 110.3(c)(5).

debts outstanding; (ii) becomes ineligible for nomination or election to that office by operation of law; (iii) files a termination report for the principal campaign committee supporting the prior candidacy; or (iv) notifies the Commission in writing that she will conduct no further campaign activities with respect to that election, except to retire net debts outstanding.¹⁷ Representative McSally has made no formal announcement that she has abandoned her House campaign. She has until May 30, 2018 to file her candidacy papers for either House or Senate, and hence is not ineligible by operation of law.¹⁸ McSally for Congress has not filed a termination report, nor has Representative McSally publicly notified the Commission that it will cease operations.

What this means is that there is simply no way Representative McSally complied with the law. Either she is not genuinely seeking re-election to the House, in which case she may not “double-dip” by continuing to raise funds into her House committee, as she has done since becoming a Senate candidate.¹⁹ Or, as seems less likely, she is trying to keep her options open for a House re-election bid in case her Senate campaign fails, by running an under-the-radar campaign. In either case, the nearly million dollars in transfers between Representative McSally’s two campaigns are flatly illegal.

CONCLUSION

The paramount public interest in transparent federal elections demands both that donors know what candidacy their funds will support and that candidates only use legally permissible and properly disclosed funds in support of their election to federal office. Representative

¹⁷ *Id.* § 110.3(c)(5)(i).

¹⁸ Ariz. Rev. Stat. Ann. § 16-311(A); *see also* Arizona Secretary of State, “Running for Federal Office,” *available at* <https://www.azsos.gov/elections/running-office/running-federal-office>.

¹⁹ She still would not have taken the specific steps necessary to formally terminate House candidacy and make a transfer possible. *See* 11 C.F.R. § 110.3(c)(5)(i).

McSally has invented her own set of rules, courting donors to support a non-existent campaign for the House of Representatives so she can have two bites at the apple while running for Senate.

Given the audacity of these violations, and the large amount of money at issue, the Commission should immediately investigate, enjoin the Respondents from further violations of the law, and enjoin McSally for Senate, Inc. from using the nearly one million dollars in illegal transfers to support the Congresswoman's Senate campaign.

Sincerely,

End Citizens United by,
Matt Burgess
P.O. Box 66005
Washington, DC 20035

SUBSCRIBED AND SWORN to before me this ____ day of April 2018.

Notary Public

My Commission Expires:
