

**BEFORE THE
FEDERAL ELECTION COMMISSION**

Jo M. Holt
Chair
Pima County Democratic Party
4639 E. First St.
Tucson, AZ 85711

Complainant,

v.

Representative Martha McSally
McSally for Congress
P.O. Box 19128
Tucson, AZ 85731

Respondents.

COMPLAINT

Complainant files this complaint with the Federal Election Commission under 52 U.S.C. § 30109(a)(1) against Representative Martha McSally and McSally for Congress for potential violations of the Federal Election Campaign Act of 1971, as amended (“the Act”) and Federal Election Commission regulations, as described below. Representative McSally announced on November 7th, 2017 that she is running for the United States Senate in Arizona. Following this date, Representative McSally continued to raise and spend funds, including financing a poll apparently designed to inform her Senate campaign strategy. Yet, Representative McSally has not filed either a Statement of Candidacy or a Statement of Organization with the Federal Election Commission (the “Commission”). The Act requires every federal candidate to file these two forms to notify both the Commission and the public of their candidacy. Representative McSally did not file either form. Complainant respectfully asks the Commission to promptly investigate these potential violations and take any action necessary to ensure that Representative

McSally cannot pursue federal candidacy while skirting the most basic disclosure obligations imposed upon all individuals that seek federal office.

FACTS

Representative McSally is a current Member of Congress from Arizona's Second Congressional District. Her principal campaign committee for her candidacy for the U.S. House of Representatives was McSally for Congress.¹

In October of 2017, Representative McSally discussed her potential interest in running for the United States Senate in Arizona during a meeting with other Members of the House of Representatives.² On November 7th, 2017 Representative McSally moved beyond the exploratory phase and affirmatively announced her candidacy.³ Yet, almost a month later, Representative McSally has not filed a Statement of Candidacy or Statement of Organization with the Commission.

LEGAL ARGUMENT

An individual triggers candidacy under federal law when he or she receives contributions aggregating in excess of \$5,000 *or* makes expenditures aggregating in excess of \$5,000 in support of his or her candidacy.⁴ Within fifteen days of triggering candidacy, a person must register as a candidate with the FEC by filing a "Statement of Candidacy."⁵

¹ See McSally for Congress, <https://www.fec.gov/data/committee/C00512236/?tab=about-committee>, FEC Committee ID C00512236.

² Ronald J. Hansen and Yvonne Wingett Sanchez, *McSally, Gosar show interest in vying for Flake's Senate seat*, AZ CENTRAL, Oct. 26, 2017, available at <https://www.azcentral.com/story/news/politics/elections/2017/10/26/martha-mcsally-paul-gosar-show-interest-running-jeff-flakes-senate-seat-arizona/804887001/>.

³ Mike Christy, *US Rep. Martha McSally tells House colleagues she's running for Senate*, ARIZONA DAILY STAR, Nov. 7, 2017, available at http://tucson.com/news/local/us-rep-martha-mcsally-tells-house-colleagues-she-s-running/article_6075f236-83fe-5d8a-87fe-924ac7fd90f3.html.

⁴ 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

⁵ 52 U.S.C. § 30102(e)(1); 11 C.F.R. §§ 100.3(a); 101.1(a); FEC Form 2, Statement of Candidacy, available at <http://www.fec.gov/pdf/forms/fecfrm2.pdf>.

Representative McSally announced her candidacy for the U.S. Senate no later than November 7th, 2017.⁶ After her announcement, it appears that Representative McSally continued to accept contributions into and make expenditures out of McSally for Congress. The McSally for Congress website, <https://mcsallyforcongress.com/donate/>, is still live and soliciting contributions. Further, Representative McSally apparently hired professional pollsters, WPA Intelligence, before November 15th to run a poll geared towards setting the strategy of her new campaign for U.S. Senate.⁷ An excerpt from the results memorandum provided by WPA confirms the company undertook the poll in support of her Senate candidacy – “Contrary to what some public polls suggest*, Kelli Ward does not hold a strong position in the Primary race for United States Senate in Arizona. . . [t]he McSally campaign is in an excellent position to build a winning Primary coalition simply by increasing her statewide name recognition, and thus building on the existing ballot advantage.”⁸

Given these facts, it is inconceivable that Representative McSally did not either raise or spend \$5,000 in support of her candidacy for Senate by November 15th at the latest, triggering the requirement to file her Statement of Candidacy within fifteen days, or by November 30, 2017. Representative McSally has not filed this form with the Commission. Therefore, the available facts suggest that Representative McSally violated the Act and FEC regulations by failing to file a Statement of Candidacy.

⁶ Mike Christy, *US Rep. Martha McSally tells House colleagues she's running for Senate*, ARIZONA DAILY STAR, Nov. 7, 2017, available at http://tucson.com/news/local/us-rep-martha-mcsally-tells-house-colleagues-she-s-running/article_6075f236-83fe-5d8a-87fe-924ac7fd90f3.html.

⁷ See Exhibit A (“WPA Intelligence conducted a benchmark survey among Republican primary voters in Arizona from November 15-16, 2017, gathering insights from n=500 Arizonans.”)

⁸ Commission regulations allow a potential candidate to spend funds to “test the waters” and decide whether or not to pursue active candidacy, including paying for exploratory polling. *See generally* 11 C.F.R. §§ 100.72; 100.131. However, the poll at issue here does not qualify as a testing the waters expense given that Representative McSally had already decided to become a candidate and the poll was publicly released. *Id.* § 100.72(b).

Moreover, the continued use of McSally for Congress for fundraising purposes suggests that Representative McSally intends to use her House committee as the authorized committee for her Senate campaign. Under FEC regulations, any change or correction in the information previously filed in McSally for Congress' Statement of Organization, including the office sought, must be reported no later than ten days following the date of the change or correction.⁹ If, as the facts suggest, Representative McSally intends to use McSally for Congress as the principal campaign committee for her Senate campaign, she was required to file an amended Statement of Organization by November 17, 2017 -- ten days after becoming a Senate candidate and changing the office sought. Representative McSally has not filed this amendment. Therefore, it appears that Representative McSally violated FEC regulations by not filing an amended Statement of Organization with the Commission.

The above facts suggest that almost a month ago Respondent decided to run for the United States Senate and began to raise and spend money to advance her candidacy without filing the disclosure forms required under the Act and Commission regulations. The Commission should promptly investigate this matter to ensure Respondent complies with the most basic disclosure requirements imposed on federal candidates.

⁹ *Id.* § 102.2(a)(2).

Sincerely,

Jo M. Holt

Jo M Holt

SUBSCRIBED AND SWORN to before me this 20th day of December 2017.

[Signature]

Notary Public

My Commission Expires:

7.11.2019

