

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FEDERAL ELECTION COMMISSION,
999 E Street, N.W.
Washington, DC 20463,

Plaintiff,

v.

CHRISTINE O'DONNELL,
29 Red Leaf Road
Moorestown, NJ 08057,

FRIENDS OF CHRISTINE O'DONNELL,
P.O. Box 3987
Wilmington, DE 19807,

and

MATTHEW MORAN,
in his official capacity as Treasurer of
Friends of Christine O'Donnell,
c/o Friends of Christine O'Donnell
P.O. Box 3987
Wilmington, DE 19807,

Defendants.

No. _____

COMPLAINT FOR CIVIL PENALTY,
DECLARATORY, INJUNCTIVE, AND
OTHER APPROPRIATE RELIEF

**PLAINTIFF FEDERAL ELECTION COMMISSION'S
COMPLAINT FOR CIVIL PENALTY, DECLARATORY,
INJUNCTIVE, AND OTHER APPROPRIATE RELIEF**

1. In 2010 and 2011, defendants converted at least \$20,000 in campaign contributions given to Friends of Christine O'Donnell, the authorized committee of Christine O'Donnell in her 2010 campaign for United States Senate from Delaware, to the personal use of Christine O'Donnell. Friends of Christine O'Donnell paid rent and utilities for a Greenville, Delaware townhouse that the Committee leased from January 2010 to March 2011 and used as its headquarters. Christine O'Donnell resided on the floors above the campaign office.

O'Donnell allegedly reimbursed Friends of Christine O'Donnell for a small portion of the costs for the townhouse, but the use of campaign funds for rent or utility payments for any part of a federal candidate's personal residence constitutes unlawful personal use. The Federal Election Commission seeks a declaration that this conversion of funds violated 52 U.S.C. § 30114(b), a permanent injunction against future similar violations by defendants, an order requiring Christine O'Donnell to disgorge the converted funds, and the assessment of appropriate civil penalties against defendants.

JURISDICTION AND VENUE

2. This action seeks declaratory, injunctive, and other appropriate relief pursuant to the express authority granted by Congress to the Federal Election Commission in the Federal Election Campaign Act of 1971, as amended ("Act" or "FECA"), codified at 52 U.S.C. §§ 30101-146 [former 2 U.S.C. §§ 431-57].¹

3. This Court has jurisdiction over this suit pursuant to 28 U.S.C. § 1345 as an action brought by an agency of the United States expressly authorized to sue by an act of Congress. 52 U.S.C. §§ 30107(a)(6), 30109(a)(6)(A).

4. A substantial part of the acts or omissions giving rise to this suit occurred in this district and venue is properly found in the United States District Court for the District of Delaware pursuant to 28 U.S.C. § 1391(b) and 52 U.S.C. § 30109(a)(6)(A).

¹ Until recently, FECA's provisions were found in Title 2 of the United States Code. Those provisions have now been moved to new Title 52. The alleged violations and many of the administrative actions in this matter occurred prior to this change. A full transfer table is available at http://uscode.house.gov/editorialreclassification/t52/Reclassifications_Title_52.html.

THE PARTIES

5. Plaintiff Federal Election Commission (“Commission” or “FEC”) is the independent agency of the United States government with exclusive jurisdiction over the administration, interpretation, and civil enforcement of FECA. *See* 52 U.S.C. §§ 30106(b)(1), 30107(a), 30109. The Commission is authorized to institute investigations of possible violations of the Act, 52 U.S.C. § 30109(a)(1)-(2), and to initiate civil actions in the United States district courts to obtain judicial enforcement of the Act, 52 U.S.C. §§ 30107(e), 30109(a)(6).

6. Defendant Christine O’Donnell was a candidate, within the meaning of 52 U.S.C. § 30101(2), for the United States Senate from Delaware in 2010.

7. Defendant Friends of Christine O’Donnell (“O’Donnell Committee” or “Committee”) was and is a political committee of Christine O’Donnell within the meaning of 52 U.S.C. § 30101(4). Ms. O’Donnell designated Friends of Christine O’Donnell as her authorized principal campaign committee, within the meaning of 52 U.S.C. § 30101(5)-(6), for the 2010 election for United States Senator representing Delaware. As such, Friends of Christine O’Donnell was authorized to receive contributions and make expenditures on behalf of the candidate, Christine O’Donnell. 52 U.S.C. § 30102(e)(1)-(2). No expenditure by or on behalf of the O’Donnell Committee could or can be made without the authorization of the Committee’s treasurer or his or her agent. *See* 52 U.S.C. §§ 30102(a), 30103(b)(4).

8. Defendant Matthew Moran is the treasurer of Friends of Christine O’Donnell. Moran has been the treasurer of the O’Donnell Committee since at least October 2010. Moran is named as a defendant in his official capacity only.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

9. FECA provides that contributions accepted by a candidate may be used by the candidate for, *inter alia*, “otherwise authorized expenditures in connection with the campaign for Federal office of the candidate.” 52 U.S.C. § 30114(a)(1).

10. The Act provides that contributions or donations described in 52 U.S.C. § 30114(a) “shall not be converted by any person to personal use.” 52 U.S.C. § 30114(b)(1).

11. The Act defines “personal use” as the use of a contribution or donation “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.” 52 U.S.C. § 30114(b)(2).

12. Personal use includes, *inter alia*, payments of home mortgages, rent, or utilities. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i)(E) (defining personal use to include the use of campaign funds for “[m]ortgage, rent or utility payments . . . [f]or any part of any personal residence of the candidate or a member of the candidate’s family.”). The allocation or pro rata sharing of such expenses is prohibited: “[T]he rule draws a clear line, and avoids the need to allocate expenses associated with the residence between campaign and personal use.” Expenditures; Reports by Political Committees; Personal Use of Campaign Funds; Final Rule, 60 Fed. Reg. 7862, 7865 (Feb. 9, 1995). The candidate “retains the option of using his or her personal residence in the campaign, so long as it is done at no cost to the committee.” *Id.*

FACTUAL BACKGROUND

13. In early January 2010, Friends of Christine O’Donnell rented a three-bedroom townhouse located in Greenville Place at 1242 Presidential Drive, Greenville, Delaware, from Mid-Atlantic Realty Co., Inc. for a term ending on March 31, 2011. Under the rental agreement

and addendum, the security deposit was \$99 and the pro-rated rent for January 8, 2010 to January 31, 2010 was \$1,316. Beginning in February 2010, the rental rate was \$1,645 per month for fourteen months, but a portion of the monthly rent (\$235) was deferred (i.e., due and payable only if the lessee defaulted). Thus, the net rent payable each month beginning in February 2010 was \$1,410. Payments required under the rental agreement totaled at least \$21,155.

14. The O'Donnell Committee used the Greenville townhouse as its headquarters during O'Donnell's 2010 campaign for United States Senate. The Committee continued to use the townhouse after the November 2010 general election.

15. Christine O'Donnell lived on the floors of the Greenville townhouse above the campaign office for at least ten months.

16. Friends of Christine O'Donnell paid rent and utilities for the townhouse, including payments to Comcast for communications services and to Delmarva Power for electricity. According to the O'Donnell Committee's reports to the FEC of receipts and disbursements, the Committee paid \$101.20 to Mid-Atlantic Realty on January 5, 2010 and \$1,318.20 to Mid-Atlantic Realty on January 8, 2010. There were additional payments to Mid-Atlantic Realty and payments to the utilities throughout 2010 and into early 2011. Those payments were in excess of \$20,000.

17. Christine O'Donnell allegedly reimbursed Friends of Christine O'Donnell for a portion of the costs for the townhouse rent and utilities. The O'Donnell Committee's reports of receipts and expenditures for 2010 and 2011 list reimbursements by Christine O'Donnell to the O'Donnell Committee of \$770 for rent and utilities on each of the following dates: April 14, 2010; June 28, 2010; August 4, 2010; September 27, 2010; and March 28, 2011.

ADMINISTRATIVE PROCEEDINGS

18. On September 20, 2010, the Commission received an administrative complaint alleging that Christine O'Donnell and Friends of Christine O'Donnell had violated FECA by spending more than \$20,362 in campaign funds to pay rent and utility payments that were the personal obligations of Christine O'Donnell. The complaint was designated by the Commission as Matter Under Review ("MUR") 6380 for administrative purposes. *See* 52 U.S.C. § 30109(a)(1).

19. By letter dated September 29, 2010, the Commission notified defendants that the complaint had been filed and provided defendants with a copy of the administrative complaint in MUR 6380. On December 3, 2010 and July 22, 2011, the Commission received responses from Christine O'Donnell and Friends of Christine O'Donnell. *See* 52 U.S.C. § 30109(a)(1).

20. After reviewing the then available information, on May 22, 2012 the Commission voted 6-0 to find "reason to believe" that Christine O'Donnell, Friends of Christine O'Donnell, and Matt Moran (in his official capacity as treasurer of Friends of Christine O'Donnell) had violated former 2 U.S.C. § 439a(b) [now 52 U.S.C. § 30114(b)]. *See* 52 U.S.C. § 30109(a)(1)-(2). The Commission notified defendants of its reason-to-believe determination by letter dated June 1, 2012.

21. The Commission's General Counsel notified defendants by letter dated June 2, 2014, that the General Counsel was prepared to recommend that the Commission find "probable cause" to believe that the defendants had violated former 2 U.S.C. § 439a(b) [now 52 U.S.C. § 30114(b)]. *See* 52 U.S.C. § 30109(a)(3). The General Counsel also provided defendants with a brief stating the position of the General Counsel on the legal and factual issues of the matter. The defendants filed a response with the Commission dated July 8, 2014.

22. After reviewing the information available, on November 18, 2014 the Commission voted 6-0 to find probable cause to believe that Christine O'Donnell, Friends of Christine O'Donnell, and Matthew Moran (in his official capacity as treasurer of Friends of Christine O'Donnell) had violated 52 U.S.C. § 30114(b). *See* 52 U.S.C. § 30109(a)(4)(A).

23. The Commission notified defendants of its November 18, 2014 findings by letter dated November 20, 2014, and, for a period of not less than 30 days, endeavored to correct the violations through informal methods of conference, conciliation and persuasion. *See* 52 U.S.C. § 30109(a)(4)(A).

24. Unable to secure acceptable conciliation agreements with defendants, on January 2, 2015 the Commission voted 6-0 to authorize filing this suit against defendants. *See* 52 U.S.C. § 30109(a)(6).

25. The Commission has satisfied all of the jurisdictional requirements in the Act that are prerequisites to filing this action.

FIRST CAUSE OF ACTION

26. Paragraphs 1 through 25, inclusive, are incorporated herein by reference.

27. The O'Donnell Committee's disbursements of Committee funds for the rent and utilities of a townhouse in which Christine O'Donnell lived converted those funds to personal use, because the use of campaign funds for rent or utility payments for any part of the candidate's personal residence constitutes personal use.

28. At least \$20,000 in O'Donnell Committee funds were converted to the personal use of Christine O'Donnell.

31. By converting Friends of Christine O'Donnell's funds to the personal use of the candidate Christine O'Donnell, defendants Christine O'Donnell, Friends of Christine O'Donnell,

and Matthew Moran (in his official capacity as treasurer of Friends of Christine O'Donnell) violated 52 U.S.C. § 30114(b).

PRAYER FOR RELIEF

WHEREFORE, plaintiff Federal Election Commission prays that this Court:

A. Declare that defendants Christine O'Donnell, Friends of Christine O'Donnell, and Matthew Moran (in his official capacity as treasurer of Friends of Christine O'Donnell) violated 52 U.S.C. § 30114(b) by converting more than \$20,000 in Friends of Christine O'Donnell funds to the personal use of Christine O'Donnell;

B. Order defendant Christine O'Donnell to disgorge an amount equal to the disbursements made by the Friends of Christine O'Donnell for the personal use of Christine O'Donnell;

C. Permanently enjoin defendants Christine O'Donnell, Friends of Christine O'Donnell, and Matthew Moran (in his official capacity as treasurer of Friends of Christine O'Donnell) from converting Friends of Christine O'Donnell funds to the personal use of Christine O'Donnell;

D. Assess an appropriate civil penalty against each of the defendants: for each violation not to exceed the greater of \$7,500 or the amount of any contributions or expenditures involved, *see* 52 U.S.C. § 30109(a)(6)(B), 11 C.F.R. § 111.24(a)(1);

E. Award plaintiff Federal Election Commission its costs in this action; and

F. Grant plaintiff Federal Election Commission such other relief as may be appropriate.

Respectfully submitted,

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January 5, 2015

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