STATE OF COLORADO
SECRETARY OF STATE
1700 BROADWAY #550
DENVER, COLORADO 80290

BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, ADMINISTRATIVE HEARING OFFICER

AHO Case No. 2025 AHO 15 (CPF)

ED Case No. 2025-01

In the Matter of

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

DOUGLAS COUNTY VICTORY FUND,

Respondent.

MOTION TO DISMISS

Respondent Douglas County Victory Fund respectfully moves to dismiss Claim One (Failure to Register) and Claim Two (Failure to Report Contributions and Expenditures) in the Administrative Complaint filed April 28, 2025, by the Elections Division. Counsel for Respondent has conferred with counsel for the Elections Division. The Elections Division opposes the requested relief.

LEGAL STANDARD

A motion to dismiss is properly granted when it appears beyond doubt that no set of facts can prove that the Complainant is entitled to relief. *Dorman v. Petrol Aspen, Inc*., 914 P.2d 909, 911 (Colo. 1996). In reviewing a motion to dismiss, the Hearing Officer must accept all factual allegations as true and view them in the light most favorable to the Complainant. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011). The Hearing Officer must rule based on the matters and factual averments stated in the Administrative

Complaint. *Allen v. Steele*, 252 P.3d 476, 481 (Colo.2011).

ARGUMENT

Here, even if all the facts alleged in the Administrative Complaint are true, the Elections Division cannot prevail on Claim One or Claim Two because they are expressly foreclosed by federal law. They must therefore be dismissed.

The Supremacy Clause provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land." U.S. Const., art. VI, cl. 2. Congress may preempt state statutes by exercising its power under the Supremacy Clause. Congress can define explicitly the extent to which its enactments pre-empt state law. *Meyer v. Conlon*, 162 F.3d 1264, 1268 (10th Cir.1998). "[A]n agency's preemption regulations, promulgated pursuant to Congressional authority, have the same preemptive effect as statutes." *Id.* at 1268. The Federal Election Campaign Act of 1971 (52 U.S.C. § 30101, *et seq.*; the "FECA") includes such express language. *See* 52 U.S.C. § 30143. The FECA states that its provisions and any regulations prescribed under its provisions "supersede and preempt any provision of State law with respect to election to Federal office." *Id.* And the FEC has clarified through regulation that the FECA supersedes state law with respect to three categories of federal campaign activity. *See* 11 C.F.R. § 108.7(b). The first preempted category is "the organization and registration of political committees supporting federal candidates." 11 C.F.R. § 108.7(b)(1). Respondent was[1] a political committee supporting a federal candidate: Rep. Lauren Bobert. Admin. Compl. ¶¶18, 19. *See* 52 U.S.C.§ 30101(4) (defining "political committee" under the FECA). Claims One and Two must be dismissed because they depend upon the application of a state registration requirement, C.R.S. § 1-45-108(3), to the Respondent.

[1] The Administrative Complaint notes that Respondent was "previously registered with the Federal Elections Commission." Admin. Compl. ¶ 6. In cooperating with the Elections Division's investigation, Admin. Compl. ¶ 25, Respondent informed the Elections Division that it has terminated its activity and provided a letter evidencing that termination from the FEC.

Claim One is for a "failure to register" under C.R.S. § 1-45-108(3). This is plainly and unequivocally barred by the express language of 11 C.F.R. § 108.7(b)(1) which forbids states from enforcing their laws regarding organization and registration of political committees supporting federal candidates. Claim Two fares no better because it is logically dependent on Claim One. It asserts a "failure to report contributions and expenditures" under C.R.S. § 1-45-108(1)(a)(1). But this supposes that Respondent is a political committee with a legal requirement to register and report to the Secretary, which, under federal law, it is not.

Even if preemption were not expressly required under the FECA[2], it avoids a First Amendment problem. As the Elections Division concedes, Respondent was unquestionably required to report to the FEC. Admin. Compl. ¶15. The Elections Division is therefore maintaining that Colorado may require Respondent to report both to the Secretary and to the FEC. It cannot, because such a duplicative reporting requirement would compel Respondent's speech without a sufficiently important governmental interest. While the Supreme Court has generally affirmed the constitutionality of campaign finance disclosure requirements even though they infringe "on privacy of association and belief guaranteed by the First Amendment." *Buckley v. Valeo*, 424 U.S. 1, 64 (1976), these requirements must be sufficiently connected to a substantial governmental interest. In *Buckley*, the Supreme Court has identified three substantial governmental interests justifying these requirements: (1) providing voters with information; (2) deterring quid pro quo candidate corruption and avoiding its appearance; and (3) facilitating the enforcement of campaign finance law. 424 U.S. 45-48; *see also Citizens United v. Fed. Election Comm'n,* 558 U.S. 310, 344-45 (2010) (affirming limits on candidate contributions permissible because of the substantial governmental interest in preventing quid pro quo corruption).

[2] The Elections Division asserts that Respondent was still obliged "to register as a Colorado political committee" because of its "activity related to state candidates." Admin Compl. ¶ 29. This ignores the express language of 11 C.F.R. § 108.7(b)(1). Further, if the preemption were not express, it would be implied by Congress' occupation of the field of federal campaign finance regulation and the obstacle the dual reporting requirements for a committee like Respondent would create under the FECA.

Here, precisely none of these interests are supported by requiring Respondent to register with the Secretary and disclose substantially the same information it is already required to disclose to the FEC under federal law. Voters already have the requisite information: it is available on the FEC's (superior) website. The contributors to Respondent and recipients of all funds raised by Respondent were disclosed Respondent's FEC reports, thereby avoiding corruption or its appearance and (3) the enforcement of campaign finance law was facilitated as evidenced by Claim Three (alleging an excessive contribution to Brauchler for DA), which is based on information from Respondent's FEC reporting. *See* Admin. Compl. ¶44. Without any legitimate interest in forcing duplicative state reporting, Colorado's law must give way. Happily, the Hearing Officer need not wade into this constitutional terrain: because the FECA expressly preempts the state law on which Claim One and Claim Two are based, they must be dismissed.

CONCLUSION

WHEREFORE Respondent moves to dismiss Claim One (Failure to Register) and Claim Two (Failure to Report Contributions and Expenditures) in the Administrative Complaint.

Respectfully submitted this 12th day of June, 2025

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CERTIFICATE OF SERVICE

This is to certify that I will cause the foregoing to be served this 12th day of June, 2025, by email and/or U.S. mail, addressed as follows:

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