**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.

## OPPOSITION TO MOTION TO DISMISS

In 2024, Respondent Douglas County Victory Fund made over $28,000 in contributions to one federal candidate, one state political party committee, and seven state candidate committees. In total, just $3,340.36 of that amount, or slightly less than 12%, went to support a candidate for federal office.

Nonetheless, the Fund argues that this sliver of its activity exempts it from having to comply with Colorado campaign finance law. But the Fund cannot cite a single case interpreting the Federal Election Campaign Act's ("FECA") preemption provision so broadly. Instead, the only persuasive authority on the issue, an advisory opinion from the Federal Election Commission ("FEC"), concludes otherwise. Where, as here, a committee supports

both state and federal candidates, states are free to require registration and disclosure of non-federal activity.

The issue before the Hearing Officer is whether an entity may evade Colorado campaign finance reporting requirements by funneling a small percentage of its activity to support federal candidates. Because it cannot, the Motion should be denied.

## FACTUAL BACKGROUND

The facts relevant to this action are largely undisputed. In 2024, a small number of voters in Douglas County, along with the Douglas County Republican Party, hosted "an event celebrating Douglas County Unity." Compl. ¶ 11 (April 28, 2025). The event cost $28,072.61 and ultimately raised $28,176.15. *Id.* ¶ 14.

According to an invitation for the event, it was paid for by "Douglas County Republican Victory Fund." *Id.* ¶ 11. When attendees made contributions at the event, they were informed that their contributions would be allocated amongst several candidate committees and entities, with the first $3,000 going to the Douglas County Republican Central Committee, and the remainder allocated between other participating candidate committees, including the committee that supported Lauren Boebert's 2024 candidacy to the United States House of Representatives. *Id.* ¶ 13. According to reports filed with the Federal Election Commission (FEC), the $28,176.15 raised by the Fund was distributed as follows:

| **Committee** | **Total** | **Percentage** |
|---|---|---|
| A "non-federal disbursement" to the Douglas County Republican Central Committee | $15,389.53 | 55% |
| Legal or Accounting Services | $6,384.26 | 23% |
| Lauren Boebert's Federal Committee | $3,340.36 | 12% |
| Seven Colorado State Candidate Committees | $3,062.00 | 11% |
| | **$28,176.15** | |

*Id.* ¶ 19.

Nearly two months after the event, on August 31, 2024, the Fund registered with the FEC. *Id.* ¶ 16.[1] On October 15, 2024, it reported its contributions and expenditures to the FEC, including its expenditures to Colorado state candidates and committees.[2] Even though the event occurred on July 2, 2024, the FEC form lists each contribution received by the Fund as having been received on July 31, 2024. *Id.* ¶ 17.

Under Colorado law, a political committee is obligated to register with the Secretary of State before receiving any contributions or making any expenditures. § 1-45-108(3), C.R.S. (2024). And in 2024, political committees were obligated to file reports of contributions on a monthly basis—the report covering the period from June 27-July 27, 2024—was due on August 1, 2024. Colorado Secretary of State, *2024 Frequent Filing Calendar*, available at https://tinyurl.com/4e3tfehh.

## ARGUMENT

### I. The FECA does not preempt state regulation of campaign finance support for state committees.

Under the U.S. Constitution, when state law conflicts with federal law "the Supremacy Clause mandates that state law give way[.]" *Middleton v. Hartman*, 45 P.3d 721, 731 (Colo. 2002). Relevant here, Congress may exercise its preemption power by including an express preemption provision in statute. *Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy*

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[1] The Complaint includes a typographical error on this point. The allegation that the Fund registered with the FEC "roughly two months after the event" is accurate—the Fund registered on August 31, 2024, not July 31, 2024.

[2] This date is not included in the Complaint, but is available on the report filed with the Federal Election Commission here. Because the Complaint references this report, Compl. ¶ 18, the Hearing Officer may review the report in ruling on the Motion to Dismiss. *See, e.g.*, *802 E. Cooper, LLC v. Z-GKids, LLC*, 2023 COA 48, ¶ 12.

*USA, Inc.*, 2025 CO 21, ¶ 36. In such cases, the express preemption provision "withdraws specified powers from the States." *Fuentes-Espinoza v. People*, 2017 CO 98, ¶ 24.

In the FECA, Congress expressly preempted "any provision of State law with respect to election to Federal office." 52 U.S.C. § 30143(a). As several courts have concluded, this provision has a "narrow preemptive effect." *Stern v. Gen. Elec. Co.*, 924 F.2d 472, 475 n.3 (2d Cir. 1991); *Krikorian v. Ohio Elections Comm'n*, 2010 WL 4117556, at * 10 (S.D. Ohio Oct. 19, 2010) ("While at first blush, [§ 30143(a)] appears to have an exceedingly broad scope, courts have not interpreted [it] in that manner."). In fact, in interpreting this provision, courts have recognized that a "'strong presumption' exists against preemption." *Karl Rove & Co. v. Thornburg*, 39 F.3d 1273, 1280 (5th Cir. 1994).

Here, Congress specified exactly what types of regulations were preempted: state regulations "with respect to election to *Federal* office." 52 U.S.C. § 30143 (emphasis added). The FEC's regulations echo this limitation by stating that the FECA preempts state laws regulating the "organization and registration of political committees supporting federal candidates," and the "disclosure of receipts and expenditures by Federal candidates and political committees." 11 C.F.R. §§ 108.7(b)(1), (2).

Consistent with this language, several courts have struck down state efforts to impose campaign finance regulations on candidates for federal office. *See, e.g.*, *Teper v. Miller*, 82 F.3d 989, 999 (11th Cir. 1996) (holding that the FECA preempted state law prohibiting state legislators from accepting contributions for federal office during the state legislative session); *Bunning v. Kentucky*, 42 F.3d 1008, 1012 (6th Cir. 1994) (holding that the FECA preempted state law preventing a U.S. congressman from spending federal campaign funds on an "exploratory poll" with regards to a possible gubernatorial race); *Weber v. Heaney*, 793 F. Supp. 1438, 1456 (D. Minn. 1992) (holding that the FECA preempted state law providing for public funding for federal elections).

But the Division's complaint does not seek to regulate activity related to election for federal office. Instead, it alleges that the Fund was obligated to register with the Secretary of State based on its activity related to *Colorado state* candidates and committees, and that it was obligated to report its contributions received for that activity, and its expenditures made to support state candidates. Because the state law only applies to the Fund's non-federal activity, it is not preempted by FECA. *See, e.g.*, *Minn. Chamber of Com. v. Choi*, 707 F. Supp. 3d 846, 866 (D. Minn. 2023) ("Because the FECA only expressly preempts state laws with respect to elections of federal office, and the prohibitions in [the challenged law] are limited to state offices, the provisions are not expressly preempted by the FECA.").

If a political committee could evade Colorado reporting requirements by making a single contribution—regardless how small—to a federal candidate, it would upend Colorado campaign finance law. *But see Moffett v. Life Care Ctrs. of Am.*, 219 P.3d 1068, 1073 (Colo. 2009) ("We construe statutes to avoid absurd results."). As the United States Supreme Court has recognized, "candidates, donors, and parties test the limits of the current law," *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 457 (2001), and there is a state interest in preventing candidates and committees from circumventing campaign finance laws, *McConnell v. FEC*, 540 U.S. 93, 144 (2003). If the Hearing Officer finds that FECA preempts Colorado's regulation of a political committee's non-federal activity, such circumvention will become the norm, rather than the exception.

The FEC itself recognizes this dynamic. It has concluded that where, like here, a committee engages in both federal and non-federal activities, the FECA "does not . . . preempt state law with respect to the reporting of receipts and disbursements of funds used for non-Federal election purposes or the registration and reporting of non-Federal election purposes or the registration and reporting of non-Federal accounts or state committees." FEC

Adv. Op. 1986-27 at 3 (Aug. 21, 1986), attached as Ex. A.[3] Thus, a state may require an entity to report its contributions and expenditures on non-federal activity, notwithstanding the entity's involvement in at least one federal election. *Id.*

Consistent with the statutory and regulatory text, and the FEC's interpretation, the Hearing Officer should "interpret [FECA's] preemption provision with respect to the reporting obligations of a Federal political committee in a manner that also recognizes [Colorado's] interest with respect to the reporting obligations of a non-Federal political committee and the receipts and disbursements for non-Federal election purposes." *Id.* Here, that means finding that Colorado's interest in the Fund's non-federal activity was not preempted by FECA, and that Colorado can apply its registration and reporting requirements to entities, like the Fund, that engage in significant state campaign finance activity even if they also engage in some federal campaign activity.

## II. The Fund's federal disclosures did not comply with Colorado law.

The Fund argues that the Hearing Officer should avoid this construction of the FECA's preemption provision because it would cause "a First Amendment problem." Mot. to

[3] Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024), federal courts will not defer to the FEC's interpretation of FECA's preemption provision. But that decision is grounded, in part, on the federal judiciary's role under the U.S. Constitution, *id.* at 385, and the federal Administrative Procedures Act, *id.* at 399. Colorado courts have not yet considered whether *Loper Bright* means Colorado courts should not defer to the interpretations of federal regulatory agencies. *But see Colo. Educ. Ass'n v. Colo. State Bd. of Educ.*, 2025 COA 56, ¶¶ 14-16 (holding that *Loper Bright* does not affect Colorado courts' deference to the interpretations of Colorado state agencies). Regardless, even under *Loper Bright*, federal agency interpretations "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." 603 U.S. at 394 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944)); *see also Banner Advert., Inc. v. People of City of Boulder ex rel. Colo.*, 868 P.2d 1077, 1083 (Colo. 1994) (finding interpretation of federal agency "instructive" under *Skidmore* in case concerning scope of federal preemption).

Dismiss at 3 (June 12, 2025). Its basis for this claim is that requiring the Fund to file reports with both the FEC and the Secretary of State would be "duplicative." *Id*.

But the Fund's federal filings fall short of what is required under state law. For starters, state law required the Committee to register "before accepting . . . any contributions," § 1-45-108(3), C.R.S., which presumably here would have been before the July 2, 2024, event. But the Committee did not register with the FEC until roughly two months later. Compl. ¶ 16; *supra* at 3 & n.1.

Second, although the Fund reported its contributions as being received on July 31, 2024, Compl. ¶ 17, the Hearing Officer can—and should—be skeptical of those reports considering the July 2, 2024, event date. Especially because three of those contributions were in-kind contributions that went to cover the cost of the event. *Id.* ¶ 14. Assuming the contributions were made at the event, instead of a month later, Colorado law would have required those contributions to be reported on August 1, 2024. *See supra* at 3. Instead, the Fund did not report those contributions until October 15, 2024. *See supra* n.2.

Finally, Colorado law requires the Committee to report the "occupation and employer" of any donor contributing more than $100. § 1-45-108(1)(a)(II), C.R.S. The Fund's federal report did not include this information. In short, the Fund's federal report was not duplicative of information Colorado voters, through their representatives, have expressed interest in.

Regardless, even if the information was duplicative it would not raise First Amendment issues. A significant value in reporting and disclosure requirements is that they be publicly available in a centralized location. To that end, Colorado law requires the Secretary to "operate and maintain a website so as to allow any person" to view Colorado campaign finance reports. § 1-45-109(5)(a), C.R.S. Given the existence of that centralized

database, it is unreasonable to require people interested in state campaign finance activity to navigate to the FEC website to learn about that state activity.

## CONCLUSION

Because the FECA does not preempt state regulation of committees supporting state candidates, the Fund's Motion should be denied.

Respectfully submitted this 3rd day of July, 2025.

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**CERTIFICATE OF SERVICE**

This is to certify that I will cause the foregoing to be served this 3rd day of July, 2025, by email and/or U.S. mail, addressed as follows:

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