

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.

REPLY IN SUPPORT OF MOTION TO DISMISS

Respondent Douglas County Victory Fund respectfully files this Reply in Support of its motion 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.

ARGUMENT

The Elections Division maintains that it can force Respondent—a dissolved federal political committee—to report to the Colorado Secretary of State essentially the same information it is required to report to the Federal Election Commission on the pain of thousands of dollars in fines even though the Federal Election Campaign Act of 1971 (52 U.S.C. § 30101, *et seq.*; the “FECA”) and its implementing regulations expressly preempt state regulation of “the organization and registration of political committees supporting federal candidates.” 11 C.F.R. § 108.7(b)(1). The Elections Division (indirectly) admits that

there is no caselaw supporting its position and that there is a dearth of caselaw touching on the question of whether Congress and the FEC meant what they said when they precluded any state regulation of political committees supporting federal candidates. (Opposition at 1.) The Division instead points to a 1986 FEC Advisory Opinion (A.O. 1986-27) regarding an Alaska state political committee that was required to report to state regulators the source of monies raised for it by its federal separate segregated fund. A review of A.O. 1986-27 confirms the core contention in Respondent's Motion to Dismiss: to the extent state campaign finance regulators have a valid interest in requiring duplicative disclosure of information regarding the original source of funds received by state political committees from federal political committees, they must get this information from the state political committees themselves, not their federal partners.

A.O. 1986-27 dealt with an organization called Alaska Labor Independent Voters Education ("A.L.I.V.E.") a political committee maintained by a Teamsters union in the state. (Opposition, Ex. A. at 1.) A.L.I.V.E. consisted of two separate segregated funds: one federal (registered with the FEC) and one state (registered with Alaska's campaign finance regulator) *Id.* Importantly, the federal fund was the sponsor of A.L.I.V.E.'s main fundraising activity—an annual raffle. *Id.* While the federal fund sponsored the raffle, it would transfer all "surplus funds" after paying for the costs of the raffle to the state fund, which the state fund would use to support exclusively state and municipal candidates. *Id.* Alaska's state campaign finance regulator argued that the federal fund was the "fundraising arm" of the state fund that its annual raffles exclusively benefitted. *Id.* at 2. Because of this arrangement—the federal fund as the sponsor of a state fund where both funds were under the same name and controlled by the same sponsoring entity—the FEC permitted Alaska to require that *the state fund* ("A.L.I.V.E. Regular") report the original source of the contributions received to the raffles by the federal fund. *Id.* at 3. The FEC held that while the only the state fund could be required to report to the state regulator, because the state fund

and the federal fund were both controlled by A.L.I.V.E., the state fund could—if determined by A.L.I.V.E. “as a matter of administrative convenience”—provide additional information regarding the federal fund’s contributions and expenditures to which it was privy without violating federal law. Critically, A.O. 1986-27 does not countenance requiring the federal fund to report anything directly to the state regulator. *Id.*

Here, the Administrative Complaint and Opposition to the Motion to Dismiss lay bare that Elections Division wants to do what A.O. 1986-27 expressly foreclosed: force a federal political committee (Respondent) to directly register with and file reports that may only be demanded from a state political committee. It may be that Colorado state political committees that participate in joint fundraising efforts with federal political committees like Respondent must disclose the original source of the funds raised in these joint fundraising efforts—but that is not what the Elections Division is seeking in this action. Rather the Elections Division is bypassing the entities with state registration and reporting requirements (the state candidate and party committees that received some of the funds raised by Respondent) and instead seeking to require the federal political committee—Respondent—with whom they raised funds to directly file this information with Colorado. This is impermissible under FECA. To the extent the Elections Division has a right to require the duplicative disclosure of contributors to Respondent whose funds benefitted state political committees, it only has a right to require that information from the state political committees at issue, not by directly regulating “the organization and registration of [Respondent, a] political committee[] supporting federal candidates.” 11 C.F.R. § 108.7(b)(1).

Because the FECA expressly preempts the Division’s attempt to require a federal political committee to register and report to the Colorado Secretary of State, Claim One and Claim Two must be dismissed.

CONCLUSION

Respondent respectfully requests the Hearing Officer dismiss Claim One (Failure to Register) and Claim Two (Failure to Report Contributions and Expenditures) in the Administrative Complaint.

Respectfully submitted this 24th day of July, 2025

FIRST & FOURTEENTH PLLC

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CERTIFICATE OF SERVICE

This is to certify that I will cause the foregoing to be served this 24th day of July, 2025, by email and/or U.S. mail, addressed as follows:

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