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.

RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Respondent Douglas County Victory Fund respectfully files this Response to Complainant's Motion for Summary Judgment filed November 12, 2025, by the Elections Division.

Respondent largely agrees with the Elections Division's summary of the posture of this case. The 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 has already reported to the Federal Election Commission and pay thousands of dollars in fines it does not have 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). As the Division correctly notes, the Hearing Officer has already determined, for the purpose of the proceedings here, that the FECA's express

preemption does not apply to foreclose the Division's primary claims. While Respondent respects the Hearing Officer's decision on preemption, Respondent urges the Hearing Officer to reconsider this determination for the reasons outlined in its Motion to Dismiss and Reply in Support of the same motion. This said, to the extent the Hearing Officer does not see reason to reconsider that decision, the undisputed facts mean the Hearing Officer must contend with the constitutional implications of a finding against the Respondent on claims one and two.[1] Because application of Colorado's committee registration and reporting requirements to Respondent on the facts here cannot satisfy exacting scrutiny under the First Amendment, the Hearing Officer should deny the Division's Motion for Summary Judgment on these claims and should enter judgment in favor of Respondent on them.

RESPONSE TO STATEMENT OF UNDISPUTED MATERIAL FACTS

Respondent agrees with the Division's statement of undisputed material facts. With regard to paragraph eight of the Divisions' statement of undisputed material facts Respondent hereby makes an offer of proof that at a hearing it would present testimony that the only reason the check for the returned excessive contribution to Brauchler for D.A. was not immediately negotiated was that Respondent no longer had a checking account into which it could deposit the check and that Respondent agreed to sign the check over to its former outside accountant in order to permit it to be negotiated.

LEGAL STANDARD

Respondent agrees with the Division's summary of the applicable legal standard. Summary judgment is only appropriate where the pleadings and supporting documents show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Metro PCS Cal., LLC v. City of Lakewood*, 2025 CO 53.

[1] Respondent does not contest its liability on claim three, the excessive contribution to Brauchler for D.A.

ARGUMENT

I. As Applied to Respondent, C.R.S. § 1-45-108(1)(a)(1) and (3) Are Not Substantially Related to Any Important Governmental Interest.

A. Section 1-45-108(1)(a)(1) and (3) Are Subject to Exacting Scrutiny

The statutes upon which the Complainant's claims are premised require that "all. . . political committees. . . shall register with the [Secretary of State] before accepting or making any contributions" (the State Registration Requirement), and that "all. . . political committees. . . shall report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into. . ." (the State Reporting Requirement). *See* C.R.S. § 1-45-108(1)(a)(1) (State Reporting Requirement) and (3) (State Registration Requirement) (together the State Requirements).

Although statutes and regulatory directives that mandate only the disclosure of contributions and expenditures are less constitutionally dubious than those imposing substantive restrictions on political speech, the Supreme Court has emphasized that they remain subject to stringent review. Because these requirements burden individuals wishing to engage in activities protected by the First Amendment with reporting obligations conjoined with substantial monetary penalties for non-compliance, the State Requirements must satisfy "'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *See Citizens United v. Fed. Elec. Comm'n*, 558 U.S. 310, 366-67 (2010); *see also Americans for Prosperity v. Bonta*, 141 S. Ct. 2373, 2383 (2021); *Citizens United v. Gessler*, 773 F.3d 200, 209 (10th Cir. 2014) ("In assessing the constitutionality of Colorado's disclosure requirements, we consider whether they satisfy exacting scrutiny."); *Sampson v. Buescher*, 625 F.3d 1247, 1255 (10th Cir. 2010). *Bonta* clarified that exacting scrutiny requires that the disclosure requirement "be narrowly tailored to the government's asserted interest." 141 S.

Ct. at 2383. Hence, for the State Registration Requirement and the State Reporting Requirement to be constitutionally applied to Respondent, their application must be supported by a sufficiently important governmental interest, and the application must be narrowly tailored to that interest.

The Supreme Court has recognized only three sufficiently important governmental interests that could sustain the State Requirements' application to Respondent, all of which find their origin in the seminal campaign finance case of *Buckley v. Valeo*, where the Court enumerated them as follows:

> First, disclosure provides the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voters in evaluating those who seek…office….
>
> Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election….
>
> Third, and not least significant, recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations…..

See 424 U.S. 1, 67-69 (1976); *see also McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 196 (2003) (reaffirming the importance of these three interests). As set forth below, on the undisputed facts here, the State Requirements operate to impose redundant reporting obligations on federal political committees like Respondent and are thus not substantially related to any of the aforementioned governmental interests.

B. Section 1-45-108(1)(a)(1) and (3), As Applied to Respondent, Are Not Substantially Related to Any Important Governmental Interest.

While they may ordinarily serve important governmental interests, the State Registration Requirement and the State Reporting Requirement, as applied to the Respondent, are not substantially related those interests. This is because federal law already requires that federal political committees engaged in joint fundraising activities like Respondent report "all funds received in the [federal] reporting period in which they are

received" on a FEC Form 3, Schedule A. 11 C.F.R. 102.17(8)(a). The FEC Schedule A requires substantially the same information for each contribution as the State Reporting Requirement, including the full name, mailing address, date the contribution is received and the contributor's occupation and employer. *See* FEC Form 3 (available at: https://www.fec.gov/resources/cms-content/documents/policy-guidance/fecfrm3.pdf). It is undisputed that Respondent registered and reported as a federal political committee as required by federal law. Thus, the State Requirements are, at least in this case, entirely redundant and fully subsumed into the disclosure obligations imposed on Respondent by federal law.

To wit, under the facts of this case, the State Registration Requirement and State Reporting Requirement do not have any functional nexus to the actual or perceived corruption of candidates, because contributions to Respondent and the disbursements it made were all reported and, with the exception of the mistaken excessive contribution to Brauchler for D.A., within applicable federal and state limits.

Similarly, under the facts of this case, the State Registration Requirement and State Reporting Requirement do not serve the function of exposing illicit excessive contributions. The duplicative nature of the State Requirements considering the Respondent's federal reporting obligations—and the state reporting obligations of state committees receiving funds from Respondent—means that the State Requirements are inherently incapable of advancing any state interest in the detection of excessive contributions.

Finally, the State Registration Requirement and State Reporting Requirement, as applied to Respondent are not substantially related to Colorado's informational interests or the integrity of the electoral process. The Supreme Court has generally recognized an "informational interest" that may provide a valid constitutional predicate for mandated disclosures in the campaign finance context. Specifically by "provid[ing] the electorate with information about the sources of election-related spending," reporting obligations permit voters to "make informed choices in the political

marketplace." *Citizens United*, 558 U.S. at 368, 369. This governmental interest is not necessarily confined to candidate contributions and extends to the realm of even uncoordinated independent expenditures. *See id.* Critically, however, a statute cannot avert constitutional scrutiny by casting a regulatory dictate as a reporting requirement rather than a substantive limitation on First Amendment freedoms. "Reporting and disclosure requirements…can infringe on the right of association," *Sampson*, 625 F.3d at 1255, and the conclusory assertion that a mandated report diffuses important information to the electorate manifestly does not satisfy the rigorous judicial review that must attach even to pure disclosure directives.

For an enactment's application to withstand exacting scrutiny, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights," *Doe*, 561 U.S. at 196 (internal quotation omitted), and the party defending the regulation must demonstrate that the law in question is "narrowly tailored to the government's asserted interest." Indeed, even where the governmental purpose may be "legitimate and substantial," that purpose "cannot be pursued by means that broadly stifle … personal liberties when the end can be more narrowly achieved." *Bonta*, 141 S. Ct. at 2384 (quoting *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)). As discussed below, the State Registration Requirement and the State Reporting Requirement, as applied to the Respondent in this case, inflicts a burden on fundamental First Amendment rights not commensurate with any material informational benefit to or the fortification of electoral integrity in Colorado.

As an initial matter, the statute unquestionably imposes a cognizable burden on those, such as the Respondent, who are within its ambit. Although Respondent is, by its own admission, subject to federal reporting requirements and therefore it could be argued that additional reporting of essentially the same information to the Secretary of State is less onerous it might otherwise be, the appraisal of a burden on First Amendment rights is necessarily a contextual undertaking. The Respondent is small—now shuttered—political

committee that contributed less than $19,000.00 to Colorado political party committees and candidate committees that was already forced to spend over $6,300.00 on accounting and reporting services. To attach duplicative disclosure obligations – coupled with substantial penalties for untimely compliance – to such discrete and temporally limited contacts with Colorado's political sphere is constitutionally disconcerting. As one federal court explained in eschewing an analogy between campaign finance reports and the filing of tax returns,

> [m]ost associations—no matter the size—are *capable*, for example, of assembling and completing the paperwork necessary to file tax returns. But such paperwork is not a burden interfering with the constitutionally protected marketplace of ideas. Unlike compliance with the mandatory tax laws, the laws at issue here give…associations a choice—either comply with cumbersome ongoing regulatory burdens or sacrifice protected core First Amendment activity. This is a particularly difficult choice for smaller businesses and associations for whom political speech is not a major purpose nor a frequent activity. Such a disincentive for political speech demands our attention.

See Minn. Citizens Concerned for Life, Inc. v. Swanson, 692 F.3d 864, 874 (8th Cir. 2012).

To be sure, such regulatory encumbrances on the Respondent's First Amendment rights may find constitutional sanction if they are in fact essential to advance the state's interest in adequately informing voters and ensuring the integrity of the electoral process. The fatal flaw the state Registration Requirement and the State Reporting Requirement in this case, however, lies in the fact that they constitute a superfluous mandate that is duplicative of requirements under federal law with which the Respondent complied. To satisfy exacting scrutiny, the party defending a disclosure statute must not only proffer an important governmental interest, but also establish that the law's directive is "narrowly tailored" to that end. The existence of a "disconnect between the avowed purpose of the…disclosure requirements and their effect…should itself provoke doubt about whether the burden on the First Amendment associational rights" can be countenanced. *See Sampson*, 625 F.3d at 1254.

As noted above, federal law already requires that political committees report "all funds received in the [federal] reporting period in which they are received" on a FEC Form

3, Schedule A. 11 C.F.R. 102.17(8)(a). The wholly gratuitous and superfluous nature of the application of the State Registration Requirement and State Disclosure Requirement to Respondent is best illuminated by the irony that lies at the crux of these proceedings: all the factual averments in the complaint regarding the Respondent's alleged undisclosed contribution were informed entirely by Respondent's publicly available federal campaign finance reports and those already properly required of the state committees with which Respondent worked to raise funds. These combined reports furnished all the material information that would have been contained in state reports by the Respondent. The very fact that the original Complainant learned of the Respondent's alleged contribution through existing public filings conclusively establishes the functional futility—and thereby the constitutional infirmity—of applying the State Requirements to Respondent.

Notably, federal courts have consistently invalidated campaign finance disclosure requirements that are merely redundant of parallel provisions elsewhere in a regulatory scheme and thus effectuate no material informational benefit. Finding that a statute mandating that candidates be provided with prompt written notice of independent expenditures against them was unconstitutional, the Tenth Circuit reasoned that such a directive was "simply overkill" and was "completely unrelated to" the state's putative interests, in part because of the existing comprehensive public reporting regime provided a mechanism for disseminating the same information. *See Citizens for Responsible Gov't PAC v. Davidson*, 236 F.3d 1174, 1198 (10th Cir. 2000). The Eighth Circuit similarly disposed of a "supplemental" reporting requirement imposed by Iowa law on independent expenditure committees, explaining that all of the information contained in the supplemental reports already would have been disclosed pursuant to other reporting obligations. *See Iowa Right to Life Comm. v. Tooker*, 717 F.3d 576, 598 (8th Cir. 2013). Because the state could "not explain how requiring additional, redundant, and more burdensome reports fulfills a sufficiently important informational interest not already advanced by" other disclosure

provisions, it was constitutionally deficient. *See id.* at 598-99.

In sum, enforcement of the State Registration Requirement and the State Reporting Requirement in these proceedings would constitute an impermissible infringement of Respondent's First Amendment rights. Substantially all the information that would have been contained in any report submitted pursuant to these State Requirements was required to have been, and in fact was, already disclosed by Respondent in its filings with the FEC (and by the state committees who received funds via their joint fundraising efforts through Respondent). In these circumstances, mandating redundant registration and reporting to the state by the Respondent would not have meaningfully advanced any informational interest of the Colorado electorate. Hence, the imposition of civil penalties on the Respondent under the auspices of the State Registration Requirement and State Reporting Requirement would further no important governmental interest and accordingly would represent an unconstitutional burden on the Respondent's First Amendment rights.

II. To the Extent The Hearing Officer Imposes Any Penalty on Claims 1 and 2, The Penalty Should Be De Minimis.

While Respondent maintains that the Hearing Officer cannot constitutionally enforce the State Registration Requirement or the State Reporting Requirement against Respondent, to the extent the Hearing Officer imposes a penalty, Respondent agrees with the Division's calculation of the base penalties applicable to Claim 1 (State Registration Requirement) as $10,489.26 and Claim 2 (State Reporting Requirement) as $5,094.62 under Rule 23.4.3. *See* Motion at 9-10. Respondent agrees with the Division that there are factors warranting mitigation of these base penalties under Rule 23.4.5, but Respondent believes much greater mitigation of these penalties is warranted.

Here, the nature and extent of the violations counsel leniency: Respondent operated for less than five months and forthrightly registered and reported its activities with the Federal Election Commission. All recipients of funds from respondent subject to federal

and/or Colorado reporting obligations similarly reported their receipt of these funds. Respondent raised relatively small sums for Colorado political party committees and candidate committees. Upon concluding its operations, it wound down and dissolved according to federal law. Respondent did not operate to deliberately deny the public information: to the contrary, it was perfectly transparent, including in its interactions with the Division; it has not behaved in the manner of a scofflaw.

Further, despite its forthright belief that state regulation was preempted and/or unconstitutional, Respondent attempted to mitigate and cure its violation by agreeing to submit its FEC Form 1 pursuant to C.R.S. § 1-45-108(3.5). Answer ¶ 26.

Finally, Respondent has simply no remaining funds to pay any significant penalty. For these reasons, Respondent respectfully proposes that any penalty on Claims 1 and 2 be de minimis.

III. <u>Respondent Agrees with the Division's Proposed Penalty for Claim 3.</u>

As noted above, Respondent does not contest liability for Claim 3. Respondent believes that the Division's proposed penalty of $100 plus ten percent of the excess contribution for a total of $130.60 is reasonable under the circumstances of this case.

CONCLUSION

Respondent respectfully requests the Hearing Officer deny the Division's Motion for Summary Judgment as to Claim One and Claim Two in the Administrative Complaint.

Respectfully submitted this 2nd day of December, 2025

FIRST & FOURTEENTH PLLC

/s/ *Christopher O. Murray*

Christopher O. Murray* (#39340)
2 N. Cascade Ave., Suite 1430
Colorado Springs, CO 80903
Telephone: 719-286-2460
Fax: 719-982-782
chris@first-fourteenth.com
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I will cause the foregoing to be served this 2nd day of December, 2025, by email and/or U.S. mail, addressed as follows:

PETER G. BAUMANN*
Senior Assistant Attorney
General, No 51620
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
peter.baumann@coag.gov
Counsel for Elections Division

Lloyd Guthrie
4676 Ponderosa Trail
Littleton, CO 80125
Lguthrie42@comcast.net
Third-Party Complainant

/s/ *Christopher O. Murray*