FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CONCURRING STATEMENT ON ADVISORY OPINION 2014-04 (ENTERPRISE HOLDINGS, INC.)

CHAIRMAN LEE E. GOODMAN AND COMMISSIONERS CAROLINE C. HUNTER AND MATTHEW S. PETERSEN

In Advisory Opinion 2014-04 the Commission concludes that the Federal Election Campaign Act of 1971, as amended ("the Act"), authorizes Enterprise Holdings, Inc. ("Enterprise") to process employee contributions to its federally-registered separate segregated fund ("SSF") through payroll deduction. Enterprise requested the Commission to confirm that the Act preempts New York law to the extent that New York law might be interpreted to apply to the corporation's use of payroll deduction to collect contributions from employees to its federal SSF. The full Commission did not reach the preemption issue in light of New York's representation that its state law does not apply. However, should New York revisit the scope of its law's application, we write to state our view that it is quite clear that New York officials are preempted from regulating Enterprise's SSF.

The Act and Commission regulations "supersede and preempt any of provision of State law with respect to election to Federal office." 2 U.S.C. § 453(a); 11 C.F.R. § 108.7(a). In amending the Act in 1976, Congress expressly "acknowledge[d] the use by corporations of various methods, such as check-off systems, to solicit voluntary contributions to separate segregated political funds" and passed an amendment "intended to authorize such methods *notwithstanding any other provision of law*." H.R. Rep. No. 95-1057, at 62 (emphasis added). Congress' purpose in preempting state regulation of federal political committees "is to provide a comprehensive, uniform Federal scheme that is the sole source of regulation of campaign financing ... for election to Federal office." Advisory Opinion 1988-21 (Weitzer) at 2; *see also* Advisory Opinion 1999-21 (Campaign for Working Families) at 7 ("Preemption ... is compelled by the need for one set of requirements for Federal campaign finance activities, rather than subjecting Federal political committees ... to a multiplicity of requirements depending upon the number of States in which they solicit contributions."). The Act constitutes an exercise of federal field preemption, such that federal law occupies the field of federal campaign finance regulation, to the exclusion of state regulation, regardless of whether state regulation purports to permit, prohibit, or augment the federal regulation.[1]

Accordingly, the Commission historically and consistently has provided requestors advisory opinions confirming that the Act preempts state law from regulating federal political

[1] *See generally Arizona v. U.S.*, 132 S. Ct. 2492, 2502 (2012) ("Where Congress occupies an entire field ... even complementary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards.").

committee fundraising generally and use of payroll deduction specifically. *See* Advisory Opinion 1982-29 (United Telecom PAC) at 2 ("[T]he Act would supersede or preempt any State law prohibiting the use of payroll deductions as a means of facilitating voluntary contribution . . . ."); Advisory Opinion 1976-23 (Conoco Employees Good Government Fund) at 2 ("State laws regarding payroll deduction plans would not be applicable to separate segregated funds established for the purpose of making contributions or expenditures in connection with Federal elections.").

The Act clearly would preempt New York from regulating Enterprise's fundraising and use of payroll deduction for its federal SSF and forecloses an interpretation by New York officials of its law to permit, prohibit, or augment federal regulation.

Lee E. Goodman
Chairman

Caroline C. Hunter
Commissioner

Matthew S. Petersen
Commissioner