COURT OF APPEALS, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203 Appeal from Mesa County District Court Judgment of Conviction and Sentence. Case Number 22CR371. Honorable Matthew D. Barrett.	DATE FILED January 8, 2026 9:41 PM FILING ID: F6C5E32A50E3C CASE NUMBER: 2024CA1951
Plaintiff-Appellee: PEOPLE OF THE STATE OF COLORADO v. Defendant-Appellant TINA PETERS	
Appellant's Attorneys: John Case, Atty reg. # 2431 John Case, P.C. 6901 South Pierce St. #340 Littleton CO 80128 Phone: (303) 667-7407 E-mail: brief@johncaselaw.com Patrick M. McSweeney, Pro Hac Vice Robert J. Cynkar, Pro Hac Vice McSweeney, Cynkar & Kachouroff, PLLC 3358 John Tree Hill Woodbridge, VA 22192 Peter Ticktin, Pro Hac Vice The Ticktin Law Group 270 SW Natura Avenue Deerfield Beach, Florida 33441	Case Number: 2024CA1951
PETERS' REPLY TO PEOPLE'S RESPONSE	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

This brief complies with the applicable word limit set forth in C.A.R. 28(g).

This Reply contains 3,651 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

s/Peter Ticktin
Counsel for Tina Peters
Admitted *Pro Hac Vice*

Article II, Section 2 of the U.S. Constitution provides that the President may pardon "Offences against the United States." This case raises the question whether "Offences against the United States" means only crimes defined by federal statutes, or if the President can also pardon state crimes that impinge on federal powers.

In this regard, the People rely on *Young v. United States*, 97 U.S. 39, 66 (1877), and this is a perfect example of the use of the "United States" shortly after the Civil War to mean, not the federal government, but rather, the states of the union. The Court held: "As the United States were, during the war, both belligerent and sovereign, they could act in either capacity, and with all the powers of both." (Emphasis added.) If the Court would have meant the federal government by the "United States," it would have spoken in the singular. It would have said "the United States **was**," not "were," and the entire context means that the states were each, belligerent and sovereign. *Young* supports the position that "United States" means the states of the union.

The Court in *Hain v. Mullin*, 436 F.3d 1168 (10th Cir. 2006) relied on *Young*, supra., and gave no consideration to the argument as to what was meant by the "United States" and the point was *obiter dicta.*

The People cite to *Ex Parte Grossman*, 267 U.S. 87 (1925), in which the Supreme Court presumed and did not conclude that by the "United States," a Committee on

Style was distinguishing offenses against the United States *vis-a-vis* the states in *obiter dicta*. However, the case actually stands for a principle which favors Mrs. Peters.

The Court held that there was no substantial difference "between the executive power of pardon in our Government and the King's prerogative," and that "The framers of our Constitution had in mind no necessity for curtailing this feature of the King's prerogative in transplanting it into the American governmental structures, save by excepting cases of impeachment." Also, "The suggestion that the President's power of pardon should be regarded as necessarily less than that of the King was pressed upon this Court and. . . it did not prevail with the majority." The King was empowered to pardon all offenses including ordinances.

Ultimately, the Supreme Court held that notwithstanding that contempt was not an "Offence against the United States," the President had the power to pardon contempt. *Grossman* stands for the proposition that the President has greater pardon power than for offenses against the federal government.

Cases such *Bjerkan v. United States*, 529 F.2d 125 (7th Cir. 1975), *Thomas v. United States*, 2024 U.S. Dist. LEXIS 247105 (S.D. Ala. 2024), *Faulkner v. Warden*, 2019 WL 585709, *Hatcher v. United States*, 2024 WL 666497; *In Re Bocchiaro*, 49 F. Supp. 37 (W.D.N.Y. 1943) which state that pardons are limited to offenses against the United States do not consider what is meant by the clause, and when President Biden's

pardon was considered, that particular pardon specified specific federal criminal statutes, so, of course, it could not apply to state offenses, or other federal offenses.

In the case *People v. Hill*, 839 P.2d 984 (Cal. 1992) a defendant was sentenced to death, partly because of the prosecution's argument that he dreamed of a pardon. This case was absurd to have been raised.

In *Williams v. Ige*, 2017 WL 2642967 the Court noted "in passing" that a President lacked authority to pardon a state conviction, but that remark was dicta.

As to the issue of dual sovereignty, there is no question that states retain "authority over the administration of their criminal justice system." However, that authority does not mean that the states can go unchecked or without federal relief. For instance, it does not preclude the federal courts from freeing prisoners who were wrongly convicted after violations of 4th Amendment rights, or from a myriad of other federal controls of the processes and procedures by state police and state courts, as well as state prisons. Even the death penalty has been a federal issue. The point is that the right of the President to pardon citizens convicted under state crimes is not anathema to the fact that the states control their own criminal justice systems.

The question is whether the U.S. Constitution must be interpreted as it was written in the eyes of the founders.

This brings us to the one case of the U.S. Supreme Court which is most

persuasive for the People, *Gamble v. United States*, 587 U.S. 678 (2019), in which the Supreme Court reviewed its interpretation of the Double Jeopardy Clause of the Fifth Amendment, which "provides that no person may be 'twice put in jeopardy' 'for the same offense.'"

In its analysis, the Supreme Court held consistent with the dual sovereignty of federal laws and state laws and held that "an 'offence' is defined by a law, and each law is defined by a sovereign [state and federal]. So where there are two sovereigns, there are two laws and two offenses." Also, the Court held: "If the same conduct violates two (or more) laws, then each offense may be separately prosecuted."

However, in the case at bar, the federal statute, 52 U.S.C. § 20511(2)(B), makes a violation of state statute a federal offense. Therefore, in the present case, the law is one in the same, and the violation is the same. It is not as though the federal law just restates the state law or even incorporates it by reference. As far as election violations are concerned, it is the violation of the state law which is, the violation of the federal law.

The Judiciary Act of 1789 (also known as the Judicial Act of 1789) was one of the first major pieces of legislation passed by the First Congress under the new U.S. Constitution. It was signed into law by President George Washington on September 24, 1789, and it established the federal judiciary system, including the Supreme Court,

circuit courts, and district courts. It also defined their jurisdictions and procedures.

Like the U.S. Constitution, it referred to the United States as the states and also as the federal government. For instance, Section 2, begins: "And be it further enacted, That the United States shall be, and they hereby are divided into thirteen districts, to be limited and called as follows. . ." (Emphasis added.)

The Act is not as expressed by the People. It does speak in Section 33 of "any crime or offence against the United States." In this context, as the People stated, it does support that by the words "United States" the Act alluded to the federal government. At the same time, the Act spoke further of appearing before "any justice or judge of the United States, or by any justice of the peace, or other magistrate of any of the United States where he may be found agreeably to the usual mode of process against offenders in such state, and at the expense of the United States." (Emphasis added.) Here, the same Act is using the words "United States" to denote the states.

As to the Whiskey Rebellion (1794-1795), a deeper analysis shows that George Washington's pardon explicitly covered "indictable offenses against the United States," but historical records show it influenced state proceedings for "uniformity."

Although, the People are correct that Governor Mifflin issued a parallel pardon, they failed to explain that President Washington authorized commissioners to offer amnesty covering both sovereigns to restore peace. See Pennsylvania Archives

(Vol. IV, pp. 335-37) for evidence that federal pressure led to state alignment.

The People's argument is circular. It presents cases which are an echo chamber for the principle that the President has the power to grant pardons for "offences against the United States." None of the cases considered that the United States, at first were the states, and not the federal government. This is best seen in *Young*, supra., where it was evident that by the United States, the court meant the states of the United States.

The Constitution is precise in granting powers of the king to the President. Tina Peters followed federal law, and in doing so, she arguably violated state laws. Except for impeachment, the President's pardon power is unlimited. Surely, he has the right to pardon crimes defined by state law which were committed to assure that federal laws were obeyed.

Tina Peters is not asking this Court to determine that there was an overriding fraud by the voting machines in Colorado, but to keep an open mind to consider this possibility.[1]

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[1] Witness testimony has now been made public that Venezuela exported software capable of rigging elections to 72 countries, including the United States, and that several swing states used a variation of that software to tabulate votes in the 2020 presidential election.

Assume *arguendo*, that in certain states, members of the state government which were elected due to the fixing of an election, and to seize full control, it has become a practice to wrongly charge and convict through rigged trials, citizens who attempt to reveal the truth, or, as in the case at bar, who preserved evidence, for this kind of scenario, the President needed to have the power to pardon.

In this regard, *Ex Parte Grossman*, supra. is a lesson which needs to be understood. In *Grossman*, id. the Supreme Court acknowledged that contempt of court was not an "Offence against the United States," as according to the Court, only statutes could create an offense. As an order of contempt was not a crime or an offense, it was not included by the strict interpretation of the words in the U.S. Constitution.

Yet, the Supreme Court understood that the President needed to be able to pardon a contempt of court. Otherwise, the courts would control and be more powerful than the President.

Likewise, at this juncture, this Court should recognize that the states cannot maintain more power than the President on issues which pertain to national interest, such as Presidential elections.

In this regard, please review the last argument in this Brief as to the Supremacy Clause and the overriding importance that the laws of the federal government are

above the laws of any state. The last argument of this brief is incorporated here in that it bolsters the argument that makes sense of the *Grossman*, id. that even though contempt was not an "Offence against the United States," and therefore, on a strict reading of the U.S. Constitution, the President was not given the power of pardoning contempt, the President has that power, nevertheless.

Likewise, the President has the power to pardon in election cases, where state actions implicate federal constitutional duties (Art. I, § 4; 52 U.S.C. § 20701), the phrase encompasses hybrid offenses. Here, we have a state conviction which implicitly "violate[s] a law of the United States." Like federal election oversight. Peters' state crimes (e.g., impersonation to copy servers) mirror federal violations under 18 U.S.C. § 595 (election interference), creating overlap which triggers pardon reach.

In *Burdick v. United States*, 236 U.S. 79 (1915) the Court queried whether pardons apply pre-conviction, affirming broad executive discretion. This implies pardons for prospective or overlapping state-federal acts, especially in "political" contexts like elections. In *Schick v. Reed*, 419 U.S. 256 (1974), "unbroken practice" defined scope and there must be no unbroken rejection in election-denial cases, as Trump's mass January 6 pardons (over 1,500 in 2025) set new precedent for federal interest overrides.

For a state to find ways to now charge the January 6 Defendants would be to undermine the administration of the Presidency. It simply cannot be the prerogative of a state governor to be able to overrule the administration of justice which was seen as necessary by the President.

Under *Murphy v. NCAA*, 584 U.S. 453 (2018), if Colorado's laws conflict with federal election integrity (e.g., by punishing preservation under § 20701), the pardon acts as a Necessary and Proper (Art. I, § 8) tool to resolve, preempting state authority.

In fact, in *Ex parte Garland*, 71 U.S. 333 (1866) the Court found that pardons were greatly instrumental in restoring rights in post-Civil War America. It had broad remedial power in a national crisis.

In *United States v. Wilson*, 32 U.S. 150 (1833) the Court held that pardons are an executive grace, unchecked except by impeachment. For elections: *Bush v. Gore*, 531 U.S. 98 (2000) saw federal oversight in state elections, suggesting a pardon extension, if state convictions chill federal duties.

The People's reliance on post-founding case law ignores the broad remedial intent in *Ex parte Garland*, where pardons healed national divisions. As in the Whiskey Rebellion, President Trump's Pardon demands state uniformity to protect federal election interests.

Also, *in re Neagle*, 135 U.S. 1 (1890), a Federal marshal was immune for state

murder charges because he was protecting a justice and had immunity because his acts were "necessary and proper" to his federal duty. In the case at hand, Tina Peters imaged her Dominion server to preserve evidence pursuant to § 20701. Even if her methods were deceptive, they were necessary.

Of course, this is part of the underlying appeal, in that Mrs. Peters had no way to present that evidence to the jury in her trial, as the trial judge took that issue as his own without hearing evidence and made a ruling. However, it is very similar to *Neagle*, where the federal agent used lethal force.

See also *Murphy v. Waterfront Comm'n*, 378 U.S. 52 (1964) in which the Supremacy Clause bars state compulsion conflicting with federal immunity and *Arizona v. United States*, 567 U.S. 387 (2012) in which there is a federal preemption in immigration (analogous to elections).

State Courts Lack Jurisdiction to Prosecute Individuals
For Actions Reasonably Taken to Comply with Federal Law

The State ignores decades of contrary judicial precedent in arguing that the prohibition on prosecution by the State of individuals for actions they took in complying with a duty imposed by federal law is not jurisdictional. People's Response at 16-19. Beginning with *Tennessee v. Davis,* 100 U.S. 257, 263 (1880), numerous courts have held that state courts lack jurisdiction to try those who, in the performance of a

duty imposed by federal law, are charged with a violation of state criminal law. *E.g., In re Neagle,* 135 U.S.1, 75 (1890); *Ohio v. Thomas,* 173 U.S. 276, 283 (1899); *Hunter v. Wood,* 209 U.S. 205, 210 (1908); *Johnson v. Maryland,* 254 U.S. 51, 56-57 (1920); *West Virginia v. Laing,* 133 F. 887, 891-92 (4th Cir. 1904); *Clifton v. Cox,* 549 F.2d 722, 730 (9th Cir. 1977); *Kentucky v. Long,* 837 F.2d 727, 744, 750-52 (6th Cir. 1988) ("Under *Neagle,* a state court has no jurisdiction…."); *New York v. Tanella,* 374 F.3d 141, 147 (2d Cir. 2004); *Colorado v. Nord,* 377 F.Supp.2d 945, 948 (D.Colo. 2005) ("[a] state court has no jurisdiction if (1) the federal agent was performing an act which he was authorized to do by the law of the United States and (2) in performing that authorized act, the federal agent did no more than was necessary and proper for him to do."); *Texas v. Kleinert,* 143 F.Supp.3d 551, 556 (W.D.Tex. 2015), *aff'd,* 855 F.3d 305 (5th Cir 2017).*See also Braden v. 30th Judicial Circuit Court,* 410 U.S. 484, 508 (1973) (Rehnquist, J., dissenting):

> The situations in which pretrial and preconviction federal interference by way of habeas corpus with state criminal processes is justified involve the lack of jurisdiction, under the Supremacy Clause, for the State to bring any criminal charges against the petitioner.

Relying on *Wood v. People,* 255 P.3d 1136, 1140 (Colo. 2011), the State argues that the Supremacy Clause merely limits the State's authority to impose liability on federal officials. People's Response at 17. *Tanella* specifically rejected that argument. 374 F.3d at 147:

> Indeed, by providing immunity from suit rather than a mere shield against liability, the defense of federal immunity protects federal operations from the chilling effect of state prosecution."

The statutory "make-my-day" immunity at issue in *Wood* is fundamentally different from Supremacy Clause immunity, which is not simply a statutory policy choice, but is entailed by the foundational structure of our government laid down by the Constitution to preserve the sovereignty of the federal government.[2] Consistent with the statement in *McCulloch v. Maryland,* 17 U.S. 316, 436 (1819) that the "States have no power…to retard, impede, burden, or in any manner control [the execution of federal laws," the Supreme Court has construed Article VI, § 1, cl. 2 to prohibit state courts from having any authority not only to prosecute and punish an individual for his performance of a federal duty but also to determine whether that individual is entitled to Supremacy Clause immunity. *Tanella,* 374 F.3d at 147. Whether the individual claiming immunity is entitled to that protection must be determined "early in the proceedings" so as "to avoid requiring a federal officer to run the gauntlet of standing trial and having to wait until later to have the [immunity] issue decided. *Id.*

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[2] For the same reason, *People v. McMurtry,* 122 P.3d 237 (Colo. 2005), which involved a statutory right to a speedy trial is inapposite. Both *McMurtry* and *Wood* involve rulings by a state court construing state laws.

State courts are prohibited from making the determination of entitlement to Supremacy Clause immunity. That responsibility is exclusively reserved to a federal court. *Idaho v. Horiuchi,* 253 F.3d 359, 374-77 (9th Cir.) (*en banc*), *vacated as moot,* 266 F.3d 979 (2001); *Baucom v. Martin,* 677 F.2d 1346, 1349 (11th Cir. 1982). The reason for prohibiting state courts from making the preliminary determination regarding immunity is that it "protects against the possibility of a hostile state forum, which might arise when the federal officer is enforcing a locally unpopular national law." *Wyoming v. Livingston,* 443 F.3d 1211, 1222 (10th Cir. 2006).

Just as the Supreme Court recognized the self-executing nature of provisions of the Bill of Rights in the absence of express language to that effect in the Constitution, *Bivens v. Four Unknown Unnamed Agents of Federal Bur. of Narcotics,* 403 U.S. 388, 399-411(1971), it recognized the immunity from state prosecution of those complying with the duties of federal law as a necessary corollary of the Supremacy Clause. *Neagle,* 135 U.S. at 75; *Davis,* 100 U.S. at 263 ("[If federal officers'] protection must be left to the action of the State court,---the operations of the general government may at any time be arrested at the will of its members.").

In addition to *Wood,* the State relies on *Wilkins v. United States,* 598 U.S. 152 (2023) for the proposition that there is a distinction between subject matter jurisdiction and procedural claim-processing rules. People's Response at 16. There is

no dispute over that proposition. *Wilkins* dealt with a time limitation for asserting claims, which is a typical non-jurisdictional claim-processing rule. *See United States v. Satterwhite,* 893 F.3d 352, 355-56 (6th Cir. 2018). Jurisdictional rules, on the other hand, govern a court's adjudicatory capacity and speak to its authority rather than to the rights and obligations of the parties. *Case v. Hatch,* 731 F.3d 1015, 1027 (10th Cir. 2013).

The rule in *Wilkins* bears no resemblance to Supremacy Clause immunity, which is directly derived from the Constitution and serves to demark a boundary between the federal government and the States. That is a traditional role of a jurisdictional rule. *See United States v. Gulley,* 130 F.4th 1178, 1183-84 (10th Cir. 2025).

Mrs. Peters' immunity arises from the performance of her duty to preserve records of the 2020 election. Her claim is not dependent, as the State suggests, People's Response at 19, on alleging or proving how she maintained the forensic images after they were shared with the cyber experts. Perversely, while the state court exercised jurisdiction it did not have by purporting to adjudicate Mrs. Peters' claim to Supremacy Clause immunity, at the same time it deprived Mrs. Peters of any opportunity to introduce evidence central to that claim – that is, evidence of her rationale for her conduct and her interactions with the experts who analyzed those images.

Only a federal court can adjudicate a claim of Supremacy Clause immunity, and in doing so, if there are disputed issues of fact relevant to the assertion of immunity, it must "conduct an evidentiary hearing to resolve them before acting on the motion." *Wyoming v Livingston 443 F3d 1211* at 1226. The focus of such a hearing is on whether, "in the course of performing an act which he is authorized to do under federal law, the agent had an objectively reasonable and well-founded basis to believe that his actions were necessary to fulfill his duties." *Id* at 1222. Here, the trial court erroneously exercised jurisdiction to adjudicate Mrs. Peters' immunity claim. It compounded that error by failing to do what a federal court would have to do – hold that evidentiary hearing to address the highly disputed facts concerning what Mrs. Peters did and why she did them. Worse, at trial the court went on to prevent Mrs. Peters from even presenting evidence that she had an objectively reasonable and well-founded basis to believe that her actions were necessary to fulfill her duties. So the reversible error of the trial court was a double whammy: it exercised jurisdiction that as a matter of constitutional law it did not have, and it committed a gross procedural error in exercising that non-existent jurisdiction.

CONCLUSION

This Court should enter an order indicating that it lost jurisdiction and finding that (1) the Pardon which was issued on December 5, 2025, was effective and vitiated

the convictions against Tina Peters in the State of Colorado; (2) the Supremacy Clause of the U.S. Constitution, Article VI, clause 2, protects Mrs. Peters from being prosecuted in state court for performing duties imposed on her by federal election laws; and (3) Tina Peters must be released from custody forthwith.

Dated: January 8, 2026

Respectfully submitted,

/s/ Peter Ticktin
Peter Ticktin, Admitted *Pro Hac Vice*
The Ticktin Law Group
270 S.W. Natura Avenue
Deerfield Beach, Florida 33441
Switchboard: (954) 570-6757

s/ John Case
John Case #2431

CERTIFICATE OF SERVICE

I certify that, on January 8, 2026, a copy of this Reply was electronically served through Colorado Courts E-Filing on opposing counsel of record.

s/ John Case