

Complaint of Colorado Misappropriation of Treasury Department Grant

The federal grant fund at issue, the Federal Tax Relief Act of 2003 (“Act”), explicitly prohibits Governor Hickenlooper’s appropriation to pay for an attorney to defend him against state ethics violations. The Act expressly limits the use of the federal funding to: payments for “essential government services”; or payments for “federal intergovernmental mandate”; and the payment must be authorized by the state budget. None of these conditions remotely apply and Governor Hickenlooper’s covert and desperate use of federal taxpayer funds to pay his \$525 per hour political attorney represent a gross misappropriation of federal taxpayer funds.

Equally troubling is the fact that these misappropriated taxpayer federal funds were then entangled and coordinated with political campaign resources. As demonstrated in this Complaint:

- John Hickenlooper’s U.S. Senate campaign spokesperson has supported and served as the official spokesperson for Hickenlooper’s federally funded ethics attorney.
- The Democratic Senatorial Campaign Committee retained a national political attorney to serve as co-counsel with the federally funded counsel.
- John Hickenlooper himself has consistently stated the ethics Complaint is purely a political issue that “would be used against any Democratic candidate.” Under Governor Hickenlooper’s interpretation no taxpayer resources should be used for this matter, but especially not the state’s 9/11 recovery federal funds.

To date, Governor Hickenlooper’s political attorney has been paid \$127,000 from the federal grant funds for this matter. (Evidence of appropriation of the Act’s federal grant funding attached as [Exhibit A](#)). The largest invoice for this matter is expected after the hearing was completed in June 2020 and will assumingly draw from the same federal funding account, so this remains an active matter.

Multiple outlets and citizen groups have questioned the impropriety of public funds being used in this manner. (Media reports questioning how federal funds can be used for \$525 per hour political attorney attached as [Exhibit B](#)). Maintaining public trust in government requires a timely review of this serious matter.

As demonstrated below, written evidence proves that John Hickenlooper violated federal law by misappropriating federal funds for personal and political use.

1) Underlying Ethics Matter

On October 12, 2018, the Public Trust Institute filed a Complaint with the Colorado Independent Ethics Commission alleging Governor John Hickenlooper violated the state constitutional gift restrictions. On November 7, 2018, Governor Hickenlooper retained a political attorney to

represent him in this matter and Governor Hickenlooper set up payments to be made from federal funding that Colorado received under the Federal Tax Relief Act of 2003. To date, John Hickenlooper's attorney has been paid \$127,000 from federal grant funds for this matter. (Transaction history showing payment from federal grant funds to attorney attached as [Exhibit A](#)).

On June 5, 2020, the Colorado Independent Ethics Commission ruled that Governor John Hickenlooper violated the state's constitution by accepting personal benefits that exceeded the constitutional gift limits. These violations represented the first constitutional ethics violation by a Colorado Governor and the Ethics Commission assessed Governor Hickenlooper with the highest penalty in its history. Therefore, Governor Hickenlooper used State of Colorado restricted federal grant funding to pay his political attorney to defend him against charges that resulted in a ruling that Hickenlooper received illegal personal gifts and supported the federally grant funded attorney with political resources.

The use of public funding to facilitate this scheme not only creates an appearance of impropriety but is an express violation of federal law and U.S. Department of Treasury Regulations.

2) **Federal Law Explicitly Prohibits Hickenlooper's Use of Federal Funds**

Governor Hickenlooper appropriated Federal Tax Relief Act of 2003 funding to pay for his political attorney. The Act explicitly prohibits Governor Hickenlooper's use of federal funds for the purposes set forth above.

The Act provides that each state shall only use the Act's federal grant funds for an "essential government service;" or to cover the costs to the state for complying with a "federal intergovernmental mandate;" and limits the use of federal funds to expenditures authorized under the state's most recent budget. (Federal Tax Relief Act of 2003, Pub. L. No. 108-27, 117 STAT. 767) attached and highlighted as [Exhibit C](#)). Under the Act, the state's use of these federal funds must qualify under one of the first two conditions and not be precluded by the final "Limitation." Governor Hickenlooper's use of federal funds is disqualified under all three provisions of the Act:

- a) **Not an Essential Government Service.** First, paying Governor Hickenlooper's political counsel to represent him on ethics charges does not qualify as an "essential government service." Paying for Governor Hickenlooper's political attorney to defend him against charges of receiving personal gifts that exceeded state restrictions, and conjoining political resources with the federally funded counsel, does not qualify under any federal definition of "essential government services."
- b) **Not a Federal Intergovernmental Mandate.** Second, paying Governor Hickenlooper's political counsel has no relation to Colorado complying with a "federal intergovernmental mandate." There is obviously no federal mandate to defend Governor Hickenlooper to pay his political attorney over \$127,000 in taxpayer funds to defend his

state constitutional ethics violations.

- c) **Not Authorized by State's Budget.** Third, paying Governor Hickenlooper's political attorney with public funds was not authorized under the state budget. The Act includes a "Limitation" clause that prohibits a state from using any federal funds for purposes not expressly authorized by the state's most recent budget: "A State may only use funds provided under a payment made under this section for types of expenditures permitted under the most recently approved budget for the State." (Federal Tax Relief Act of 2003, Pub. L. No. 108-27, 117 STAT. 767). Governor Hickenlooper's expenditure for a \$525 per hour private attorney to defend him against ethics charges has not been included in any state budget. Governor Hickenlooper's use of taxpayer funds to pay for his \$525/hour political attorney to represent him before the Ethics Commission is expressly precluded under the "Limitation" section of the Act.

Governor Hickenlooper's use of federal funds to pay his political attorney to defend him against ethics violations is separately and independently disallowed under three separate section of the Act. Governor Hickenlooper's use of federal funds is an illegal misappropriation of federal grant funds managed by the U.S. Department of Treasury.

3) **Comingling Federally Fund Resources with Political Campaign Resources is Illegal**

While the Act explicitly prohibited Governor Hickenlooper from using the federal funds for his purposes, additional facts affirm that the specific political manner in which he used these taxpayer funds is improper, unethical, and illegal under separate provisions of federal and state laws. The following evidence demonstrates how Governor Hickenlooper comingled federal taxpayer funds with political campaign resources in direct violation of federal and state laws:

- a) **Governor Hickenlooper Maintained This Was A Political Matter and Then Used Federal Funding to Engage in The Political Matter.** Governor Hickenlooper has repeatedly insisted that he believed the ethics complaint was a purely political matter that "would be used against any Democratic candidate." Governor Hickenlooper's position makes it indefensible to use taxpayer funds (granted to the state by the Act) for what he insists is a political matter. (Statements from John Hickenlooper affirming his position that this was a political matter attached as [Exhibit D](#)).
- b) **Hickenlooper's Senate Campaign Directly Supported Federal Funded Lawyer.** Governor Hickenlooper's campaign staff served as the official spokesperson for the activities performed by the federally funded counsel, further demonstrating an illegal and improper intertwining of state and federal funds with a political campaign. (John Hickenlooper for U.S. Senate Campaign Resources Supporting the Federally Funded Attorney attached as [Exhibit D](#)).
- c) **Democratic Senatorial Campaign Committee Hired a National Political Attorney to Serve as Co-Counsel with Federal Grant Funded Attorney.** The Democratic

Senatorial Campaign Committee (DSCC), a federal political committee, retained a national political attorney to serve as co-counsel with attorney retained using the state's federal grant funding. (Hickenlooper political campaign confirmation that DSCC counsel will serve alongside federally funded legal team attached as [Exhibit E](#)).

Governor Hickenlooper's actions to appropriate federal taxpayer funds to pay for a matter he deems "political" and then attach and coordinating these federally funded resources with federal political campaign resources, is wholly improper and illegal under federal law.

4) Hickenlooper's Actions Caused Governor Polis to Violate Federal Law

Finally, Governor Hickenlooper not only violated federal law by misappropriating federal funds but also created a series of legal compliance violations for his predecessor. Before leaving office, Governor Hickenlooper set it up in the state finance system so that his political attorney's monthly invoices would be paid out of the federal grant funds. Governor Hickenlooper has claimed that the state use of funding is always transparent and publicized but paying his political attorney with the state's federal grant funds was performed in secret with no transparency or disclosure.

The fact that federal 9/11 recovery funds could be used to fund a \$525 per hour private political lawyer to defend Governor Hickenlooper against claims that he received illegal personal gifts and benefits from corporations has been the source of multiple front page news reports questioning how this can be lawful under the terms of the federal grant funds. (Media Reports attached as [Exhibit F](#)). These appropriations continued after Governor Hickenlooper left office. As of this June 22, 2020, Governor Jared Polis has not stopped these illegal payments and it is expected that Governor Hickenlooper's political attorney will be submitting the largest invoice from this matter in the coming weeks to cover his extensive time preparing for and presenting at the actual hearing. The \$127,000 billed to date was just in preparation of the ethics hearing.