

STATE OF COLORADO

Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Gigi Dennis
Secretary of State

William A. Hobbs
Deputy Secretary of State

NOTICE OF HEARING

**Hearing on Petition to Repeal Election Rule 46
Concerning Vacancies in Nomination
(Hearing Consolidated with Rulemaking Hearing Previously Announced)**

On September 13, 2006, the Secretary of State received a petition for the repeal of Rule 46, concerning vacancies in nomination, of the Election Rules of the Colorado Secretary of State, 8 CCR 1505-1. Such petition was filed pursuant to section 24-4-103 (7), C.R.S., which provides as follows:

24-4-103. Rule-making - procedure. (7) Any interested person shall have the right to petition for the issuance, amendment, or repeal of a rule. Such petition shall be open to public inspection. Action on such petition shall be within the discretion of the agency; but when an agency undertakes rule-making on any matter, all related petitions for the issuance, amendment, or repeal of rules on such matter shall be considered and acted upon in the same proceeding.

Prior to receiving the petition, the Secretary of State issued a notice of proposed rulemaking on the subject of the Election Rules of the Colorado Secretary of State, with a hearing to be held on October 4, 2006. Therefore, in accordance with section 24-4-103 (7), the petition for the repeal of Rule 46 will be considered at such rulemaking hearing at the time and place previously announced, as follows:

October 4, 2006
9:00 a.m. to 11:30 a.m.
Blue Spruce Conference Room
1700 Broadway, 2nd Floor
Denver, Colorado

At that time, written and oral data, comments, and arguments will be received from all interested parties concerning the repeal or amendment of Rule 46. Written submissions must be filed before or during the hearing in order to be considered. Oral testimony may be limited in order to allow the rulemaking proceeding to go forward with reasonable promptness and efficiency. The hearing will be audio recorded and broadcast over the Internet. For additional information concerning the rulemaking hearing as previously announced, please refer to the Notice of Proposed Rulemaking, which is available on the Secretary of State's web site at: <http://www.sos.state.co.us/pubs/pressrel/rules.html>

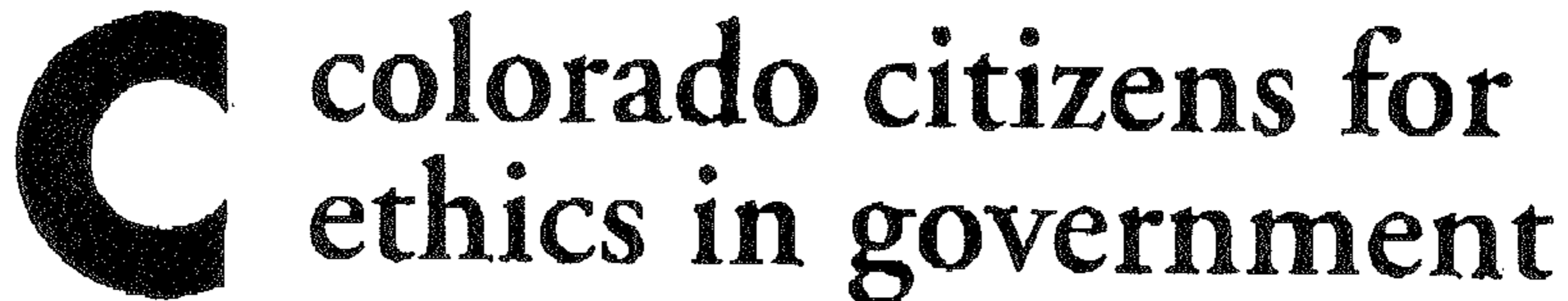
Attached to this Notice is a copy of Rule 46 and a copy of the petition for the repeal of Rule 46. For additional information, please contact the Elections Division at (303) 894-2200.

Election Rules of the Colorado Secretary of State
8 CCR 1505-1

Rule 46. Rules Concerning Vacancies in Nomination

- 46.1 If a vacancy occurs and is filled by the appropriate vacancy committee more than 18 days but less than 70 days before a general election pursuant to section 1-4-1002(2.3)(a), C.R.S., (2005) the designated election official shall make a reasonable attempt to have the replacement candidate's name printed on the official ballots.
- 46.1.1 For the purposes of this Rule 46, a vacancy shall be considered filled on the date that the replacement candidate files an acceptance of nomination with the appropriate filing officer pursuant to section 1-4-1002(5)(a), C.R.S., (2005).
- 46.1.2 Notwithstanding other events, if absentee or polling place ballots have been printed and are in the possession of the designated election official, the designated election official shall not be required to print or issue replacement ballots.
- 46.2 If the designated election official is unable to provide corrected ballots, after reasonably attempting to ensure that the replacement candidate's name is printed on the ballots pursuant to Rule 46.1, the designated election official shall meet all requirements provided in section 1-4-1002(2.3)(b), C.R.S., (2005), and all votes cast for the withdrawing candidate shall be counted for the replacement candidate.
- 46.2.1 If a replacement candidate receives a plurality of votes cast at the general election, the replacement candidate shall be certified as the winning candidate.

(As adopted by the Secretary of State on a temporary basis, September 7, 2006)



colorado citizens for ethics in government

September 13, 2006

The Honorable Gigi Dennis
Secretary of State of Colorado
1700 Broadway, Suite 250
Denver, CO 80290

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SEP 13 2006

CO SECRETARY OF STATE

VIA FACSIMILE: (303) 869-4860

Dear Secretary Dennis:

Colorado Citizens for Ethics in Government ("CCEG") respectfully requests, pursuant to C.R.S. § 24-4-103(7) that you repeal Rule 46 of the Colorado Secretary of State Election Rules, 8 C.C.R. 1505-1, and place the matter on the calendar for the existing hearing on other campaign finance matters, scheduled for October 4, 2006.

On September 7, 2006, you adopted Rule 46 pursuant to your temporary emergency rulemaking authority. C.R.S. § 24-4-103(6). This action bypassed the ordinary rulemaking procedures of the Colorado Administrative Procedure Act ("APA"), which requires notice of proposed rulemaking to be published at least 20 days before the public rulemaking proceedings commence. C.R.S. § 24-4-103(3). The APA also requires you to give interested parties an opportunity to be heard before adopting the rule. C.R.S. § 24-4-103(4).

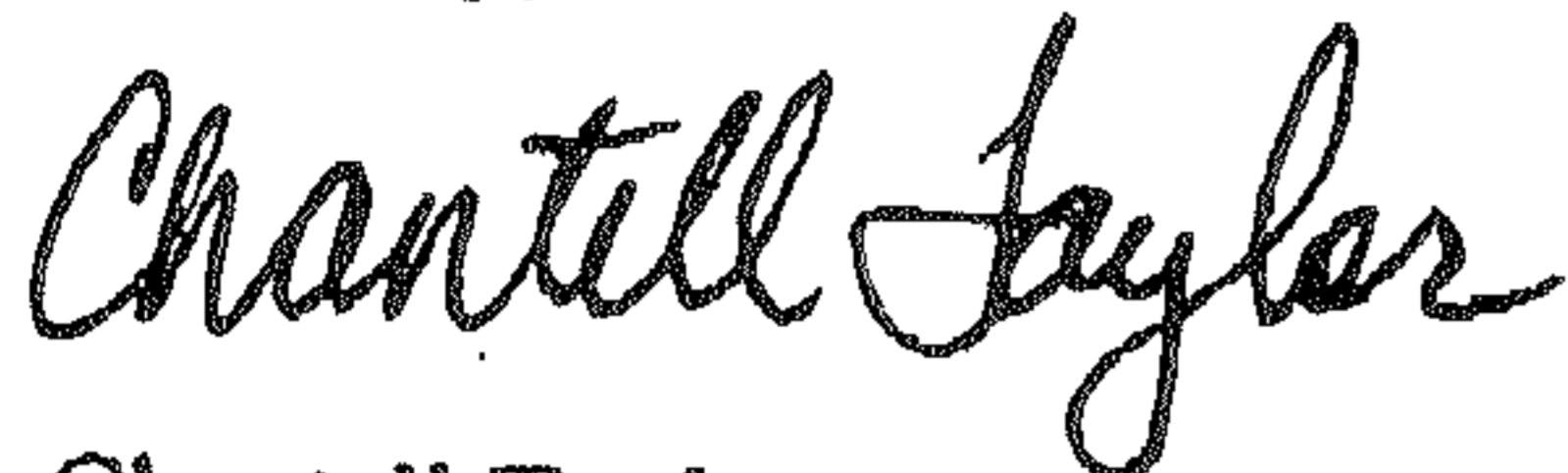
However, it appears that you have failed to meet the standard to bypass ordinary notice and comment rulemaking procedures. An agency may adopt a temporary emergency rule "only if the agency finds that *immediate* adoption of the rule is *imperatively necessary* to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest...." C.R.S. § 24-4-103(6) (emphasis added). Although the 2006 general elections are approaching and there is a hypothetical possibility that a candidate may withdraw within the timeframe of Rule 46, it is also true that this issue has been, or should have been, apparent long before you issued the emergency rule.

Moreover, your spokesperson, Dana Williams, has stated that there is "no immediate or recent case" that is driving the push for the new rule and that to date "there is no candidate who would be the beneficiary of the rule change." See, John C. Ensslin, Replacement candidates now get dropout's votes, *Rocky Mountain News* (September 12, 2006). In fact, it appears that this rule illegally usurps the authority of the legislature and

directly conflicts with state law, given that it would shift votes cast for one person to another without any legislative authority. See C.R.S. § 1-4-1002(2.3).

These and other issues are best vetted through public comment. We urge you to withdraw your emergency promulgation of Rule 46, and provide the public adequate notice and the opportunity to provide comments on your proposed changes to the state election rules. Thank you for your attention to this matter. I look forward to your response.

Sincerely,



Chantell Taylor
Director
Colorado Citizens for Ethics in Government

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CO SECRETARY OF STATE

Encl.