



NOTICE OF TEMPORARY ADOPTION

Office of the Secretary of State
Campaign and Political Finance Rules
8 CCR 1505-6

Repealed Rules: 4.12 and 4.22
Amended Rules: 14.3 and 14.4
New Rules: 4.26 and 9.6

April 2, 2010

Pursuant to Article XXVIII, Section 9(1)(b) of the Colorado Constitution and Section 1-45-111.5(1), C.R.S. (2009) and the rulemaking provisions of the State Administrative Procedure Act, section 24-4-103, C.R.S. (2009), I, Bernie Buescher, Colorado Secretary of State, do hereby adopt and give NOTICE of the of the temporary adoption this 2nd day of April, 2010, of amendments to the Secretary of State Campaign and Political Finance Rules (8 CCR 1505-6), as follows (additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken type~~).

Rule 4.12 is repealed as follows:

- 4.12 ~~Article XXVIII, Section 6(2), concerning the prohibition against funding by corporations and labor organizations for electioneering communications, shall not apply to any corporation that:~~
- ~~a. Was formed for the purpose of promoting political ideas and cannot engage in business activities~~
 - ~~b. Has no shareholders with a claim on its assets or other income~~
 - ~~c. Was not established by, and does not accept contributions from business corporations or labor organizations. REPEALED.~~

Rule 4.22 is repealed as follows:

- 4.22 ~~In accordance with Article XXVIII, sections 2(8), 2(9), and 3(4)(a) of the Colorado Constitution, corporations or labor organizations shall not make expenditures, including independent expenditures, that expressly advocate the election or defeat of a candidate. REPEALED.~~

New rule 4.26 is adopted as follows:

- 4.26 FOR DISCLOSURE REQUIRED PURSUANT TO SECTION 1-45-108(1)(A)(III), C.R.S., IF THE PERSON MAKING THE EXPENDITURE FOR ELECTIONEERING COMMUNICATIONS IS A CORPORATION OR LABOR ORGANIZATION, DISCLOSURE OF THE NAMES AND ADDRESSES OF PERSONS CONTRIBUTING \$250 OR MORE USED TO MAKE ELECTIONEERING COMMUNICATIONS SHALL ONLY BE REQUIRED IF SUCH MONEYS ARE SPECIFICALLY INTENDED TO BE USED FOR ELECTIONEERING COMMUNICATIONS.

New Rule 9.6 is adopted as follows:

- 9.6 IN ACCORDANCE WITH THE DECISION OF THE SUPREME COURT OF COLORADO IN *IN RE: INTERROGATORIES PROPOUNDED BY GOVERNOR BILL RITTER, JR., CONCERNING THE EFFECT OF CITIZENS UNITED V. FEDERAL ELECTION COMMISSION*, 558 U.S. _____ (2010) ON CERTAIN PROVISIONS OF ARTICLE XX[V]III OF THE CONSTITUTION OF THE STATE OF COLORADO, NOTWITHSTANDING ARTICLE XXVIII, SECTION 3(4)(A) AND SECTION 6(2) OF THE COLORADO CONSTITUTION, CORPORATIONS AND LABOR ORGANIZATIONS SHALL NOT BE PROHIBITED FROM MAKING INDEPENDENT EXPENDITURES OR FROM PROVIDING FUNDING FOR ELECTIONEERING COMMUNICATIONS. SUCH EXPENDITURES SHALL BE REPORTED IN ACCORDANCE WITH SECTION 1-45-108(2), C.R.S., AND THIS RULE.

Rule 14.3 is amended as follows:

- 14.3 For the purposes of section 5, article XXVIII, any person, INCLUDING A CORPORATION OR LABOR ORGANIZATION, who is otherwise not required to file reports with the Secretary of State or county clerk and who obligates funds exceeding \$1,000 for any single independent expenditure more than 30 days prior to a primary or general election shall deliver notice to the Secretary of State in accordance with the reporting schedule established for political parties in section 1-45-108 (2), C.R.S. [*IN RE: INTERROGATORIES PROPOUNDED BY GOVERNOR BILL RITTER, JR., CONCERNING THE EFFECT OF CITIZENS UNITED V. FEDERAL ELECTION COMMISSION*, 558 U.S. _____ (2010) ON CERTAIN PROVISIONS OF ARTICLE XX[V]III OF THE CONSTITUTION OF THE STATE OF COLORADO, No. 10SA43 (COLO. MAR. 22, 2010)]

Rule 14.4 is amended as follows:

- 14.4 Notwithstanding rules 14.1 and 14.2, any person (including a natural person, entity, candidate committee, political committee, small donor committee, political party, ~~or~~ 527 political organization, CORPORATION, OR LABOR ORGANIZATION) who obligates funds in any amount for an independent expenditure, fewer than 31 days before a primary or general election, shall deliver notice to the Secretary of State within 48 hours of obligating funds for such expenditure. [*IN RE: INTERROGATORIES PROPOUNDED BY GOVERNOR BILL RITTER, JR., CONCERNING THE EFFECT OF CITIZENS UNITED V. FEDERAL ELECTION COMMISSION*, 558 U.S. (2010) ON CERTAIN PROVISIONS OF ARTICLE XX[V]III OF THE CONSTITUTION OF THE STATE OF COLORADO, No. 10SA43 (COLO. MAR. 22, 2010)]

Such rule amendments are effective immediately. In accordance with section 24-4-103(6), C.R.S (2009), attached is a statement of the findings of the Secretary of State justifying the adoption of this rule on an emergency basis.

Dated this 2nd Day of April, 2010.

William A. Hobbs

William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State



Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State
Campaign and Political Finance Rules
8 CCR 1505-6

April 2, 2010

1. Basis and Purpose

This statement pertains to the temporary adoption of specific amendments to the Colorado Secretary of State's "Rules Concerning Campaign and Political Finance".

The amendments are adopted to achieve the uniform and proper administration and enforcement of campaign and political finance laws of the State of Colorado, including Article XXVIII of the Colorado Constitution and Article 45, Title 1 of the Colorado Revised Statutes.

The Secretary of State finds that the rule amendments are necessary to answer questions arising under Article XXVIII of the Colorado Constitution and Article 45 of Title 1, Colorado Revised Statutes, and to make changes necessary to conform to the rulings of the United States Supreme Court in *Citizens United v. Federal Elections Commission*, 558 U.S. ____ (2010) and the Colorado Supreme Court in *In re: Interrogatories Propounded by Governor Bill Ritter, Jr., Concerning the Effect of Citizens United v. Federal Election Commission*, 558 U.S. ____ (2010) on Certain Provisions of Article XX[V]III of the Constitution of the State of Colorado, No. 10SA43 (Colo. Mar. 22, 2010).

In the *Citizens United* case, the Supreme Court overruled *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, invalidating any "prohibition on the use of corporate treasury funds for express advocacy" (*Citizens United*, slip op. at 50, internal quotations omitted). The Court held that the prohibitions in the Federal Election Campaign Act (FECA) against corporate spending on independent expenditures or electioneering communications are unconstitutional. In the *Interrogatories* case, the Colorado Supreme Court held that similar prohibitions on corporate and labor organization spending under Colorado law are unconstitutional under the *Citizens United* ruling.

The following specific amendments to the Campaign and Political Finance Rules are necessary to conform the rules to the decisions in those cases:

- Rule 4.12, concerning exceptions to the state constitutional provision prohibiting funding by corporations and labor organizations for electioneering communications, would be

repealed to reflect the Supreme Court's determination in the *Citizens United* and *Interrogatories* cases, which invalidate any prohibition on corporate funding of electioneering communications. Because rule 4.12 carved out a narrow exception for certain corporations that were not subject to the prohibition, it is no longer necessary.

- Rule 4.22, which prohibits corporations and labor organizations from making expenditures expressly advocating the election or defeat of a candidate, would be repealed to reflect the rulings in the *Citizens United* and *Interrogatories* cases, which lifted bans on corporate and labor organization funding for independent expenditures and electioneering communications.
- New rule 4.26 would be adopted to clarify reporting requirements for corporations and labor organizations providing funding for electioneering communications.
- New Rule 9.6 is would be adopted to reflect the holdings in the *Citizens United* and the *Interrogatories* cases by stating that corporations and labor organizations shall not be prohibited from making independent expenditures or from providing funding for electioneering communications and by affirmatively requiring that such expenditures be reported.
- The amendments to Rules 14.3 and 14.4 clarify campaign finance reporting requirements for corporations and labor organizations providing funding for independent expenditures and electioneering communications.

2. Rulemaking Authority

Amendments to the Colorado Secretary of State "Rules Concerning Campaign and Political Finance" are adopted pursuant to the following statutory and constitutional provisions:

1. Article XXVIII, Section 9(1)(b) of the Colorado Constitution, which requires the Secretary of State to:
"Promulgate such rules, in accordance with article 4 of title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of [Article XVIII of the Colorado State Constitution]."
2. Section 1-1-107(2)(a), C.R.S., (2009), which authorizes the Secretary of State:
"To promulgate, publish, and distribute . . . such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws"
3. Section 1-45-111.5(1), C.R.S., (2009), which requires the Secretary of State to:
"[P]romulgate such rules in accordance with article 4 of title 24, C.R.S., as may be necessary to enforce and administer any provision of [article 45 of title 1, C.R.S.]."



Statement of Justification and Reasons for Adoption of Emergency Rules
April 2, 2010

Repealed Rules: 4.12 and 4.22
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Secretary of State Campaign and Political Finance Rules

Under Article XXVIII, Section 9(1)(b), Colorado Constitution, the Secretary of State has the power to “[p]romulgate such rules, in accordance with article 4 of title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of [Article XXVIII of the Colorado Constitution].” In addition, section 1-45-111.5(1), C.R.S. (2009), authorizes the Secretary of State to “promulgate such rules . . . as may be necessary to administer and enforce any provision of [Article 45 of Title 1 of the Colorado Revised Statutes].”

Certain amendments to the existing Rules Concerning Campaign and Political Finance must be adopted and effective immediately for the uniform and proper administration and enforcement of the campaign and political finance laws of the State of Colorado, including Article XXVIII of the Colorado Constitution and Article 45, Title 1 of the Colorado Revised Statutes. The Secretary of State finds that the amendments to the rules are immediately necessary to answer questions arising under Article XXVIII of the Colorado Constitution and Article 45 of Title 1, Colorado Revised Statutes, and to make changes necessary to conform to the ruling of the Supreme Court of the United States in *Citizens United v. Federal Elections Commission*, 558 U.S. (2010), and the ruling of the Supreme Court of Colorado in *In re: Interrogatories Propounded by Governor Bill Ritter, Jr., Concerning the Effect of Citizens United v. Federal Election Commission*, 558 U.S. _____ (2010) *on Certain Provisions of Article XX[V]III of the Constitution of the State of Colorado*, No. 10SA43 (Colo. Mar. 22, 2010).

The Secretary of State finds that in order to ensure the uniform and proper administration and enforcement of the campaign and political finance laws, the adoption of this rule is necessary both to comply with law and to preserve the public welfare generally.

Therefore, in accordance with section 24-4-103(6), C.R.S. (2009), the Secretary of State finds that the amendments to existing Rules Concerning Campaign and Political Finance 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.”