



## NOTICE OF ADOPTION

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

May 13, 2011

As authorized by Article XXVIII, Section 9(1)(b) of the Colorado Constitution and Section 1-45-111.5(1), C.R.S. (2010) and the rulemaking provisions of the State Administrative Procedure Act, section 24-4-103, C.R.S. (2010), I, Scott Gessler, Colorado Secretary of State, do hereby adopt and give **NOTICE** of the permanent adoption this 13th day of May, 2011 of the following amended rules of the Colorado Secretary of State Rules Concerning Campaign and Political Finance, 8 C.C.R. 1505-6. (Additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken type~~. Annotations may be included):

New Rule 4.27 is adopted as follows:

- 4.27 IN ACCORDANCE WITH THE DECISION OF THE TENTH CIRCUIT COURT OF APPEALS IN *SAMPSON V. BUESCHER*, Nos. 08-1389, 08-1415 (10TH CIR. 2010), AN ISSUE COMMITTEE SHALL NOT BE SUBJECT TO ANY OF THE REQUIREMENTS OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION OR ARTICLE 45 OF TITLE I, C.R.S., UNTIL THE ISSUE COMMITTEE HAS ACCEPTED \$5,000 OR MORE IN CONTRIBUTIONS OR MADE EXPENDITURES OF \$5,000 OR MORE DURING AN ELECTION CYCLE. AN ISSUE COMMITTEE THAT ACCEPTS \$5,000 OR MORE IN CONTRIBUTIONS OR MAKES EXPENDITURES OF \$5,000 OR MORE DURING AN ELECTION CYCLE SHALL REGISTER WITH THE APPROPRIATE OFFICER WITHIN 10 CALENDAR DAYS OF ACCEPTING OR MAKING SUCH CONTRIBUTIONS AND EXPENDITURES.
- A. CONTRIBUTIONS RECEIVED AND EXPENDITURES MADE PRIOR TO REACHING THE \$5,000 THRESHOLD ARE NOT REQUIRED TO BE REPORTED. CONTRIBUTIONS RECEIVED AND EXPENDITURES MADE AFTER REACHING THE \$5,000 THRESHOLD SHALL BE REPORTED IN ACCORDANCE WITH THE REPORTING SCHEDULE SPECIFIED IN SECTION 1-45-108(2)(A), C.R.S.
  - B. AN ISSUE COMMITTEE SHALL PROVIDE THE COMMITTEE'S BALANCE ON THE DATE OF COMMITTEE REGISTRATION AS A "BEGINNING BALANCE" ON THE COMMITTEE'S INITIAL REPORT OF CONTRIBUTIONS AND EXPENDITURES.
  - C. FOR PURPOSES OF THIS RULE, AN ELECTION CYCLE SHALL BE THE TWO-YEAR HOUSE OF REPRESENTATIVES ELECTION CYCLE.

This new rule shall take effect twenty (20) days after publication in the Colorado Register in accordance with the State Administrative Procedures Act.

A written Statement of Basis, Purpose and Specific Statutory Authority is attached and hereby incorporated herein by reference.

Dated this 13th day of May, 2011,



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William A. Hobbs  
Deputy Secretary of State

For

Scott Gessler  
Colorado Secretary of State



## STATEMENT OF BASIS, PURPOSE, AND SPECIFIC STATUTORY AUTHORITY

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### I. Basis and Purpose

This statement pertains to the amendments to the Colorado Secretary of State “Rules Concerning Campaign and Political Finance.” The amendments and revisions to these rules are intended to achieve 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 rules are intended to answer questions arising under Article XXVIII of the Colorado Constitution and Article 45 of Title 1, Colorado Revised Statutes. In particular, new Rule 4.27 changes the contribution and expenditure threshold that triggers enforcement of the requirement for an issue committee to register and file disclosure reports, in order to resolve uncertainty about registration and disclosure requirements in light of the ruling of the Tenth Circuit Court of Appeals in *Sampson v. Buescher*, Nos. 08-1389, 08-1415 (10th Cir. 2010).

In determining the appropriate dollar threshold, the Secretary of State has considered various relevant factors, including but not limited to:

- A definition of what might appropriately be considered a “small” issue committee that should not be subject to registration and reporting requirements;
- The public’s informational interest in knowing who is spending and receiving money to support or oppose ballot measures;
- Evidence indicating a correlation or lack thereof between contribution size and corruption or the appearance of corruption relating to ballot-issue campaigns;
- The burden presented by registration and reporting by groups of various sizes, including cost of complying; and
- Data that support a particular threshold.

The Secretary of State has also carefully considered the reasoning expressed by the Court in the *Sampson* case. In particular, while the Court stated, “We do not attempt to draw a bright line below which a ballot-issue committee cannot be required to report contributions and expenditures”, the Court nevertheless did say that the “Plaintiffs’ contributions and expenditures” in that case were “well below the line”. According to the Court’s opinion (at footnote 5), the Plaintiffs’ contributions and expenditures were \$2,239.55 and \$1,992.37, respectively. (Namely, \$813.53 in in-kind contributions, plus \$1,426 in cash contributions, for a total of \$2,239.55 in contributions, all of which was expended except for \$247.18 that remained in the bank account, for a total of \$1,992.37 in expenditures.) Therefore, it appears from the

Court's opinion that the minimum threshold must be "well above" the \$2,239.55 in contributions and \$1,992.37 in expenditures of the Plaintiffs in the Sampson case.

## **II. Rulemaking Authority**

Amendments to the Colorado Secretary of State "Rules Concerning Campaign and Political Finance" are adopted in accordance with 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., (2010), 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., (2010), 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.]."