



NOTICE OF PROPOSED RULEMAKING

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

May 13, 2011

In accordance with the requirements of section 24-4-103(3)(a), C.R.S., (2010), notice of proposed rulemaking is hereby given by the Secretary of State. A rulemaking hearing will be held on **June 14, 2011 from 2:00 p.m. to 4:00 p.m.** in the Blue Spruce Conference Room on the second floor of the Office of the Secretary of State at 1700 Broadway, Denver, Colorado 80290. All interested persons will be afforded an opportunity to be heard on the subject of revisions and amendments to the Secretary of State's "Rules Concerning Campaign and Political Finance," 8 CCR 1505-6.

Subject of the Proposed Rulemaking

The Secretary of State will consider amendments and revisions to the Colorado Secretary of State "Rules Concerning Campaign and Political Finance" as may be necessary or appropriate to administer the provisions of Article XXVIII of the Colorado Constitution and Article 45 of Title 1, Colorado Revised Statutes. Specifically, the Secretary of State will consider rules to clarify requirements for filing Reports of Contributions and Expenditures under section 1-45-108(2)(a)(I), C.R.S. Clarification is necessary because of a conflict of laws that results from the passage of Senate Bill 11-189. The Secretary of State will also consider rules necessary to answer questions arising under Article XXVIII of the Colorado Constitution and Article 45 of Title 1, Colorado Revised Statutes.

Authority for Proposed Rulemaking

Revisions and amendments to the Secretary of State's "Rules Concerning Campaign and Political Finance" [8 CCR 1505-6] are proposed in accordance with the following statutory and constitutional provisions:

1. Article XXVIII, Section 9(1)(b), Colorado Constitution, which requires the Secretary of State 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 State Constitution]."


2. Section 1-1-107(2)(a), C.R.S., (2010), which authorizes the Secretary of State “[t]o 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 “promulgate 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.]”

Paper or editable electronic copies of the initial draft of the proposed rules may be obtained from the office of the Secretary of State at 1700 Broadway, Suite 200, Denver, Colorado, 80290, or by calling (303) 894-2200, extension 6329. The proposed rules are also posted on the Secretary of State website at www.sos.state.co.us.

A final copy of the proposed rules for consideration at the public rulemaking hearing will be posted on the Secretary of State website and made available to the public no later than June 9, 2011 in accordance with section 24-4-103(4)(a), C.R.S., (2010), which states that “[a]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing.”

The rulemaking hearing on June 14, 2011 will be held in accordance with section 24-4-103, C.R.S., (2010). Written and oral data, comments, and arguments will be received from all interested parties. Please file written submissions at or before the commencement of the hearing on June 14 at 2:00 p.m., or by the end of the written comment period announced at the conclusion of the hearing to ensure full consideration. Oral testimony may be limited in order to allow the proceedings to go forward with reasonable promptness and efficiency. The hearing will be audio recorded and broadcast over the Internet. The broadcast may be accessed through the Secretary of State website at www.sos.state.co.us on the “Information Center” page under “Broadcast and Recorded Meetings.” For additional information, please contact Andrea Gyger, Elections Division at andrea.gyger@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 13th Day of May, 2011.



William A. Hobbs
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State



PROPOSED STATEMENT OF BASIS, PURPOSE, AND SPECIFIC AUTHORITY

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

May 13, 2011

I. Basis and Purpose

This proposed 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 proposed to achieve the uniform and proper administration and enforcement of and to answer questions that arise under 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. In particular, new Rule 5.13 would be adopted to clarify requirements for filing Reports of Contributions and Expenditures under section 1-45-108(2)(a)(I), C.R.S. Clarification is necessary to mitigate a conflict of laws that results from the passage of Senate Bill 11-189.

Following the enactment of Senate Bill 11-189, which moves the date of the primary election from the first Tuesday in August to the last Tuesday in June, a conflict in statutory provisions regarding campaign finance filings results. Failure to clarify filing requirements by rule would lead to an absurd result under the statute. Without clarification, candidates and committees required to file Reports of Contributions and Expenditures with the Secretary of State under section 1-45-108(2)(a)(I), C.R.S., would file both quarterly reports and bi-weekly reports from July through December of off-election years. Under U.S. Supreme Court jurisprudence, "If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity." *Church of the Holy Trinity v. United States*, 143 U.S. 457, 460 (1892). Here, in order to avoid the "absurdity," the Secretary of State's office proposes to clarify the filing requirements in a way that is consistent with the original intent of section 1-45-108(2)(a)(I), C.R.S.

With the enactment of Senate Bill 11-189, the original legislative intent of section 1-45-108(2)(a)(I)(B), C.R.S., is no longer achieved. The filing requirements set forth are designed to require infrequent filings in an off-election year, and more frequent filings during an election year when the disclosure of contribution and expenditure information is more relevant to the public. With a primary election date in late June, however, the frequent filings commence nearly a year prior to the date of the election, rather than in the months immediately preceding the election only. The existence of section 1-45-108(2)(a)(I)(A), C.R.S., which sets forth quarterly filings in a non-election year demonstrates that the intent was to have the more frequent

filings occur only immediately before an election, not for nearly a year. Therefore, eliminating the conflict between subsections (A) and (B) brings the statute back into harmony with the legislative intent.

II. Statutory Authority

Amendments to the Colorado Secretary of State “Rules Concerning Campaign and Political Finance” would be 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 “[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 XVIII of the Colorado State Constitution].”
2. Section 1-1-107(2)(a), C.R.S., (2010), which authorizes the Secretary of State “[t]o 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 “promulgate 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.]”

COLORADO SECRETARY OF STATE

[8 CCR 1505-6]

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

Preliminary Draft of Proposed Rules

May 13, 2011

***Disclaimer:** This draft is not necessarily final. The proposed changes to be considered at the public rulemaking hearing may be different than the proposed changes in this draft. This draft is submitted to the Department of Regulatory Agencies for the purpose of complying with section 24-4-103(2.5), C.R.S., which requires that a draft be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.*

*If revisions to this draft are made prior to the rulemaking hearing, a revised copy of the proposed rule changes will be available to the public no later than **June 9, 2011**, and a copy will be posted on the Department of State's web site, in compliance with the requirement of section 24-4-103(4)(a), C.R.S., that "[a]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing."*

Proposed additions to the current rules are reflected in SMALL CAPS. Proposed deletions from current rules are shown in ~~stricken type~~. Annotations may be included.

1 Rule 5.13 would be adopted as follows:

2 5.13 REPORTS OF CONTRIBUTIONS AND EXPENDITURES REQUIRED BY
3 SECTION 1-45-108(2)(A)(I)(B), C.R.S., ARE NOT REQUIRED TO BE FILED. THIS IS TO
4 RESOLVE THE CONFLICT BETWEEN SECTIONS 1-45-108(2)(A)(I)(A) AND (B), C.R.S.,
5 CREATED BY THE PASSAGE OF SENATE BILL 11-189, WHICH ADJUSTS THE DATE OF THE
6 PRIMARY ELECTION TO THE LAST TUESDAY IN JUNE.