



**REVISED PROPOSED STATEMENT OF BASIS, PURPOSE, AND
SPECIFIC STATUTORY AUTHORITY**

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

June 8, 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. Furthermore, 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). See also Colorado’s statutory rules of construction, specifically, section 2-4-203, C.R.S. (in enacting a statute, “it is presumed that . . . a just and reasonable result is intended”) and section 2-4-203, C.R.S. (in construing an ambiguous statute, a court may consider “the consequences of a particular construction”). Here, in order to avoid an absurd or unreasonable result, 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. Section 1-45-108(2)(a)(I)(B), C.R.S., states that reports shall be filed:

On the first Monday in July and on each Monday every two weeks thereafter before the primary election.

With a primary election date in late June, however, the requirement that reports be filed more frequently in July leads to an absurd result. 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 as would occur without proposed Rule 5.13.

The proposed changes do not mean that contributions and expenditures will go unreported. All such transactions must still be reported in accordance with the filing requirements set forth in sections 1-45-108(2)(a)(I)(A), (C), (D), and (E), C.R.S. The reporting periods in Rule 5 still apply, and ensure that contributions and expenditures will be disclosed, regardless of date.

Furthermore, the original language of section 1-45-108(2)(a), C.R.S., as it was adopted by citizen initiative in 1996, is adequate to address the public's interest in disclosure of campaign financing. As adopted, the section did not require any additional pre-primary reporting. The original, citizen-approved reporting requirements included approximately four reports in the months before the primary election. These reports were required to be filed on "the first day of the month beginning the sixth full month before the election;" no other reports were required during the calendar year before the primary election. *See* section 1-45-108(2)(a), C.R.S. (1997). Therefore, by leaving intact the reporting required by sections 1-45-108(2)(a)(I)(A), (C), (D), and (E), C.R.S., periodic disclosure of all contributions and expenditures as originally approved by voters, is still achieved.

The Secretary of State expects the General Assembly to remedy the statutory problem during the next legislative session beginning in January 2012. In the mean time, however, it is necessary to adopt Rule 5.13 in order to provide guidance to filers that they are not required to file biweekly reports beginning in July of this year.

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.]”