



NOTICE OF TEMPORARY & PERMANENT ADOPTION

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

June 29, 2011


In accordance with the requirements of Article XXVIII, Section 9(1)(b) of the Colorado Constitution and section 1-45-111.5(1), C.R.S., and the rulemaking provisions of the State Administrative Procedure Act, section 24-4-103, C.R.S., I, Scott Gessler, Colorado Secretary of State, do hereby adopt and give NOTICE of the temporary and permanent adoption this 29th day of June, 2011 of the following amended rules of the Colorado Secretary of State Rules Concerning Campaign and Political Finance, 8 C.C.R. 1505-6. (~~struckthrough~~ text represents deletions from the current rules and text in SMALL CAPS represent additions to the rules):

Rule 5.13 is adopted as follows:

- 5.13 THE REQUIREMENT OF SECTION 1-45-108(2)(A)(I)(B), C.R.S., TO FILE REPORTS OF CONTRIBUTIONS AND EXPENDITURES BIWEEKLY RATHER THAN MONTHLY BEGINNING IN JULY BEFORE THE PRIMARY ELECTION, WAS RENDERED INFEASIBLE BY THE ENACTMENT OF SENATE BILL 11-189, WHICH MOVED THE DATE OF THE PRIMARY ELECTION FROM AUGUST TO JUNE. THEREFORE, MONTHLY FILING AS REQUIRED BY SECTION 1-45-108(2)(A)(I)(C), C.R.S., REMAINS APPLICABLE THROUGH THE PRIMARY ELECTION AND UNTIL BIWEEKLY REPORTING BEGINS IN SEPTEMBER BEFORE THE NOVEMBER ELECTION AS REQUIRED BY SECTION 1-45-108(2)(A)(I)(D), C.R.S.

These rule amendments shall become immediately effective on a temporary basis and will become permanently effective 20 days after publication in the Colorado Register in accordance with the State Administrative Procedures Act. In accordance with section 24-4-103(6), C.R.S, attached is a statement of the findings of the Secretary of State justifying the adoption of this rule on a temporary basis. A written Statement of Basis, Purpose and Specific Statutory Authority is attached and hereby incorporated herein by reference.

Dated this 29th day of June, 2011,


William A. Hobbs
Deputy Secretary of State

For
Scott Gessler
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**

June 29, 2011

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 necessary 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 is 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 law 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 question arises as to the operation of statutory provisions governing the required frequency of campaign finance reports. A literal reading of section 1-45-108(2)(a)(I), C.R.S., after the enactment of SB 11-189, would appear to require that candidates and committees begin filing biweekly Reports of Contributions and Expenditures in July of this year, rather than in July of the election year, as was the case prior to the enactment of SB 11-189. Such a literal reading of the statute yields an absurd result under the statute, namely, candidates and committees would file biweekly reports beginning in July of off-election years, and would continue filing biweekly reports until May of the next year, just before the primary election. In May, monthly filing as required by section 1-45-108(2)(a)(I)(C), C.R.S., would resume, and continue through the June primary election until September.

This literal reading means that reports become most frequent in the off election year when there is the least campaign finance activity and then become less frequent immediately before the primary election. This reading is not only absurd, it is directly contrary to the clear legislative intent when section 1-45-108(2)(a)(I)(B), C.R.S., was enacted in 2000 to require filing more frequently shortly before the primary election, not less frequently. Clearly the Colorado General Assembly neglected to make a conforming amendment to section 1-45-108(2)(a)(I)(B), C.R.S., when it enacted SB 11-189 earlier this year. As a result, the Secretary of State must provide guidance to filers so that they are not left with uncertainty about whether they are required to immediately begin filing Reports of Contributions and Expenditures every two weeks, more than 11 months before the primary election.

Under U.S. Supreme Court jurisprudence, "[i]f 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 intends 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 Rule 5.13.

The adoption of Rule 5.13 does 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, this regulatory change returns the schedule for filing campaign finance disclosure reports to the state in which it was adopted by citizen initiative in 1996. 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). Sub-subparagraph (B), requiring biweekly reports in advance of the primary election, was added by the legislature in 2000, four years after the citizen initiative. Therefore, by leaving intact the reporting required by sections 1-45-108(2)(a)(I)(A), (C), (D), and (E), C.R.S., the filing schedule simply reverts to its original, voter-approved state. While this may not be an ideal solution, it is at least a position endorsed by the voters of Colorado.

In order to preserve the statute as a whole, the Secretary of State must adopt Rule 5.13 to provide guidance to filers that they are not required to file biweekly reports beginning in July of this year. It is necessary for the Secretary to take this action because the General Assembly neglected to remedy the problem during the 2011 session. The Secretary of State is hopeful that the General Assembly will adopt a conforming amendment to section 1-45-108(2)(a)(I)(B), C.R.S., during the next legislative session beginning in January 2012.

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.]”



**STATEMENT OF JUSTIFICATION AND REASONS FOR
ADOPTION OF TEMPORARY RULES**

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

June 29, 2011

New Rule: 5.13

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., 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].”

A public rulemaking hearing was conducted in accordance with section 24-4-103(4)(a), C.R.S., on June 14, 2011 to receive comment and testimony on the proposed rule. The Secretary of State finds that certain amendments to the existing Rules Concerning Campaign and Political Finance must be adopted and immediately effective on a temporary basis to ensure 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 amendments are also necessary to comply with law and to preserve the public welfare generally. Specifically, the passage of Senate Bill 11-189 brings into question whether candidates and committees for statewide office would be required to begin filing Reports of Contributions and Expenditures on a biweekly basis beginning on July 5, 2011. Given this proximity, temporary adoption of Rule 5.13 is necessary to clarify that candidate and committees are not required to begin filing biweekly reports more than 11 months before the primary election.

Therefore, in accordance with section 24-4-103(6), C.R.S., 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.”