



## Draft Statement of Basis, Purpose, and Specific Statutory Authority

### Colorado Department of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

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#### I. Basis and Purpose

This statement explains proposed amendments to the Colorado Department of State rules concerning campaign and political finance.<sup>1</sup> The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado campaign finance laws,<sup>2</sup> and implement amendments necessary due to the passage of Senate Bill 22-237, enacted June 7, 2022; and Senate Bill 23-276, enacted June 6, 2023.

Specific proposed rule revisions include:

- Amendments to Rule 1 concerning definitions.
  - New Rule 1.10 defines “direct ballot measure expenditure”.
  - New Rule 1.11 defines “direct spending” as used in section 1-45-103(7.2), C.R.S., and throughout these rules.
  - Rule 1.12 is recodified from current Rule 24.2.5 and amended to include the term “elections division” used throughout these rules.
  - New Rule 1.14 defines “funding intermediary” as used in section 1-45-103(12)(b)(II)(E), C.R.S., and throughout these rules.
  - New Rule 1.25 defines “organization” as used in section 1-45-103(12)(b)(II), C.R.S., and throughout these rules.
  - New Rule 1.34 defines “respondent” as used throughout these rules.
  - New Rule 1.36 defines “substantial evidence” as used throughout these rules.
  - Rule 1.37 is renumbered from Rule 1.23 and amended.

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<sup>1</sup> 8 CCR 1505-6.

<sup>2</sup> Article 45 of Title 1, C.R.S. (2022).

- Other amendments to definitions involve technical, grammatical, and renumbering edits. Definition rules found in Rule 24.2 are re-codified throughout Rule 1.
- Amendments under Rule 2 concerning candidates and candidate committees.
  - Amendments to Rule 2.2.4 update the management of unexpended campaign funds, in accordance with the passage of SB 23-276.
    - Rule 2.2.4(a) clarifies existing rule language on what a candidate committee must report 35 days after the major election.
    - Rule 2.2.4(c)(1) clarifies that for a candidate committee seeking to transfer funds to a new candidate committee for a different office, any funds held in excess of the party limits of the prior office sought must be disbursed as is required by section 1-45-103.7(12)(b), C.R.S., and funds previously designated as unexpended funds from a prior election cannot be transferred to a new committee and must be disbursed, as required by section 1-45-106(a) and (b), C.R.S.
    - Rule 2.2.4(c)(5) is repealed as it is contradictory to statute, due to the passage of SB 23-276, and to the extent it is not contradictory, it repeats statutory requirements concerning the disbursement of campaign funds
    - Rule 2.2.4(d) is repealed as it is duplicative to statute and is replaced with more clarity in regard to the funds rolled over from a candidate's prior candidate committee to the new candidate committee and the political party limits placed on those funds.
  - Amendments to Rule 2.4 concerning personal financial disclosures.
    - Current Rules 2.4.1 through 2.4.5 are recodified to the subsections (a) through (e) of Rule 2.4.1. Amendments to Rule 2.4.1 clarify that any delinquent filing fines may be waived if a candidate withdraws their candidacy. Amendments to Rule 2.4.1(d) clarify that all personal financial disclosure filings must be filed electronically and are publicly available online. Current Rule 2.4.6 has been repealed as it is no longer necessary due to the passage of SB 23-276.
    - New Rule 2.4.2 provides guidance for campaign and political finance complaints related to personal financial disclosures. This includes providing a list of documents a respondent may submit to the Elections Division's campaign and political finance enforcement team to rebut the allegations, clarification as to additional penalties for willful behavior, and the continuation of the complaint process even if the candidate is no longer obligated to file, supplement, or correct a personal financial disclosure.
- Amendments under Rule 4 concerning issue committees.

- New Rule 4.3 clarifies the different major purpose standards for an organization engaging in statewide ballot measure advocacy or non-statewide ballot measure advocacy and creates a rebuttable presumption sufficient to support an administrative complaint that the major purpose standard has been met for statewide ballot measure advocacy if a complaint was filed and the Division finds a potential violation and the organization has failed to provide substantial evidence that they have not met the major purpose standard. If the organization appears and answers an administrative complaint in a hearing before a hearing officer, the presumption of meeting the major purpose standard no longer applies.
- New Rules 5.1.4 through 5.1.6 clarify itemizing independent expenditure reporting. An independent expenditure committee must list all expenditures of \$250 or more during a reporting period, must list individual expenditures in amounts less than \$250 that aggregate to a total of \$250 or more, and may report all other expenditures of less than \$250 during a reporting period, in total, as non-itemized expenditures.
- Amendments under Rule 10 concerning the management of campaign contributions and expenditures.
  - Amendments to Rule 10.1.3 include the removal of outdated language and update a statutory citation.
  - New Rule 10.19 concerning the reporting of a direct ballot measure expenditure. Reporting is not required until after \$5,000 in the aggregate has been spent, and thereafter each additional \$1,000 must be reported. This rule also clarifies what information related to the expenditure must be disclosed.
  - New Rule 10.20 regarding earmarked contributions. This rule clarifies what is an earmarked contribution, specifically it is deemed to be earmarked if it includes or is accompanied by a direction or instruction which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a candidate, committee, or ballot measure. Earmarked contributions must include the name of the original source of the contribution and the person making the contribution in the committee's disclosure report.
- New Rule 12.3.5 clarifies when a candidate committee must terminate, in accordance with section 1-45-103.7(12)(a)(I) and (II), C.R.S.
- Amendments to Rule 19.1 include removing outdated language with the passage of SB 23-276 and fixing a grammatical error.
- Amendments under Rule 23 concerning complaints filed under section 1-45-111.7, C.R.S.
  - Amendments to Rule 23.1 include New Rule 23.1.3, concerning defining the plausibility pleading standard for a complaint, amendments to Rule 23.1.5, renumbered from current Rule 23.1.4, clarifying that late or missing filings are not subject to additional penalties not outlined in Rule 18, and incorporate necessary renumbering and grammatical changes.

- Amendments to Rule 23.3.3 include clarification between late filing penalties and complaint fines and the creation of a fine structure for failure to file or failure to file an accurate or complete personal financial disclosure, and violations stemming from the improper spending of public funds on a campaign.
- Definition rules in Rule 24.2 are recodified throughout Rule 1. Recodification is necessary to ensure that definitions used in multiple campaign and political finance rules are in Rule 1. Current Rules 24.3 through 24.22 are renumbered to Rules 24.2 through 24.21.

Other changes to rules not specifically listed are non-substantive and necessary for consistency with Department rulemaking format and style. Cross-references in rules are also corrected or updated.

## **II. Rulemaking Authority**

The constitutional and statutory authority is as follows:

- Article XXVIII, Section 8 of the Colorado Constitution, which requires the Secretary of State to “promulgate rules related to filing in accordance with article 4 of title 24, C.R.S.”
- 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 XXVIII of the Colorado State Constitution].”
- Section 1-1-107(2)(a), C.R.S., (2022), 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.”
- Section 1-45-109(5)(e), C.R.S., (2022), which authorizes the Secretary of State to “promulgate rules necessary for the implementation of [the electronic campaign finance filing system, TRACER].”
- Section 1-45-109(6)(a), C.R.S., (2022), which authorizes the Secretary of State to promulgate rules for the use of the electronic campaign finance filing system, TRACER.
- Section 1-45-111.5(1), C.R.S., (2022), which requires the Secretary of State to promulgate such rules “as may be necessary to enforce and administer any provision of” Article 45 of Title 1, C.R.S.