



NOTICE OF SECOND RULEMAKING HEARING

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

Date of this notice: March 30, 2011
Date of second hearing: May 3, 2011
Date of first hearing: January 26, 2011

On December 10, 2010, the Colorado Secretary of State issued a Notice of Rulemaking regarding proposed revisions and amendments to the Secretary of State's "Rules Concerning Campaign and Political Finance" [8 CCR 1505-6] in accordance with section 24-4-103(3)(a), C.R.S., (2010). The notice was published in the Colorado Register on December 25, 2010 under CCR tracking number 2010-01153. A public rulemaking hearing was held on January 26, 2010 in accordance with the State Administrative Procedure Act.

The Secretary of State hereby gives notice of an additional hearing on **May 3, 2011 from 1:00 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. The purpose of this hearing is to afford opportunity for all interested persons to be heard and for the Secretary of State to receive comments from the public on the revised draft proposed rules dated March 30, 2011 (attached).

Interested parties are encouraged to submit written comment and/or oral testimony regarding the potential effects of the proposed rule on or before the commencement of the hearing. In particular, the Secretary of State seeks comment or information addressing the factors outlined in the Revised Proposed Statement of Basis, Purpose, and Specific Statutory Authority (attached).

Paper or editable electronic copies of the initial and revised drafts 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.

The hearing will be held in accordance with section 24-4-103, C.R.S., (2010) and 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.



**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**

March 30, 2011

1. Basis and Purpose

This revised 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 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 provide guidance 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.

Furthermore, like the Court in the *Sampson* case, the Secretary of State has considered the “purposes and findings” expressed by the People in section 1 of Article XXVIII of the Colorado Constitution:

The people of the state of Colorado hereby find and declare . . . that *large campaign contributions* made to influence election outcomes *allow wealthy individuals, corporations, and special interest groups to exercise a disproportionate level of influence over the political process* . . . that political contributions from corporate treasuries are not an indication of popular support for the corporation's political ideas *and can unfairly influence the outcome of Colorado elections*; and that the interests of the public are best served by . . . providing for full and timely disclosure of campaign contributions, independent expenditures, and funding of electioneering communications, and strong enforcement of campaign finance requirements.

Thus, the amount of the threshold for issue committee regulation must be set at a level that focuses on “large campaign contributions” from “wealthy” sources that result in “a disproportionate level of influence over the political process”

2. Rulemaking Authority

Amendments to the Colorado Secretary of State “Rules Concerning Campaign and Political Finance” are proposed pursuant to 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.].”

COLORADO SECRETARY OF STATE

[8 CCR 1505-6]

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

Revised Draft of Proposed Rules

March 30, 2011

Disclaimer: This draft supersedes the Preliminary Draft dated December 10, 2010 that was considered at the Rulemaking Hearing on January 26, 2011. This Revised Draft will be discussed at the May 3, 2011 rulemaking hearing.

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

1 New Rule 4.27 would be adopted as follows:

2 4.27 IN ACCORDANCE WITH THE DECISION OF THE TENTH CIRCUIT COURT OF APPEALS IN
3 *SAMPSON V. BUESCHER*, NOS. 08-1389, 08-1415 (10TH CIR. 2010), ~~THE \$200 AMOUNT~~
4 ~~SPECIFIED IN ARTICLE XXVIII, SECTION 2(10)(A) OF THE COLORADO CONSTITUTION AND~~
5 ~~SECTION 1-45-108, C.R.S., IS INCREASED TO ~~[\$2,500]~~~~ AN ISSUE COMMITTEE SHALL NOT BE
6 SUBJECT TO ANY OF THE REQUIREMENTS OF ARTICLE XXVIII OF THE COLORADO
7 CONSTITUTION OR ARTICLE 45 OF TITLE 1, C.R.S., UNTIL THE ISSUE COMMITTEE HAS
8 ACCEPTED \$5,000 OR MORE IN CONTRIBUTIONS OR MADE EXPENDITURES OF \$5,000 OR
9 MORE DURING AN ELECTION CYCLE. AN ISSUE COMMITTEE THAT ACCEPTS \$5,000 OR MORE
10 IN CONTRIBUTIONS OR MAKES EXPENDITURES OF \$5,000 OR MORE DURING AN ELECTION
11 CYCLE SHALL REGISTER WITH THE APPROPRIATE OFFICER WITHIN 10 CALENDAR DAYS OF
12 ACCEPTING OR MAKING SUCH CONTRIBUTIONS AND EXPENDITURES.

13 A. REPORTS OF CONTRIBUTIONS AND EXPENDITURES FILED BY AN ISSUE COMMITTEE
14 UNDER THIS RULE SHALL BE PROSPECTIVE ONLY. CONTRIBUTIONS RECEIVED AND
15 EXPENDITURES MADE PRIOR TO REACHING THE \$5,000 THRESHOLD ARE NOT
16 REQUIRED TO BE REPORTED. CONTRIBUTIONS RECEIVED AND EXPENDITURES MADE
17 AFTER REACHING THE \$5,000 THRESHOLD SHALL BE REPORTED IN ACCORDANCE
18 WITH THE REPORTING SCHEDULE SPECIFIED IN SECTION 1-45-108(2)(A), C.R.S.

19 B. AN ISSUE COMMITTEE SHALL PROVIDE THE COMMITTEE'S BALANCE ON THE DATE OF
20 COMMITTEE REGISTRATION AS A "BEGINNING BALANCE" ON THE COMMITTEE'S
21 INITIAL REPORT OF CONTRIBUTIONS AND EXPENDITURES.

22 C. FOR PURPOSES OF THIS RULE, AN ELECTION CYCLE SHALL BE THE 2 YEAR PERIOD OF
23 TIME BEGINNING 31 DAYS AFTER A MAJOR ELECTION AND ENDING 30 DAYS AFTER
24 THE NEXT MAJOR ELECTION.