



July 28, 2016

Honorable Wayne Williams  
Secretary of State of Colorado  
1700 Broadway, Suite 250  
Denver, CO 80290

**Re: SUPPLEMENT: Notice of Proposed Rulemaking; Campaign and Political Finance,  
8 C.C.R. 1505-6.**

Dear Secretary Williams:

Please accept this supplement to the comments filed July 25, 2016 by Colorado Ethics Watch (“Ethics Watch”) in connection with the June 15, 2015 Notice of Proposed Rulemaking for Campaign and Political Finance Rules. This supplement concerns the proposed rules implementing HB 16-1282 regarding disclosure in school board elections.

Both the text of HB 16-1282 and the legislative history show that school board candidate filing requirements in an election year have been changed from the prior unique “special district” filing schedule to the regular “frequent filing schedule” used by state candidates in the year of their elections. Therefore, as explained in our prior public comments, the Secretary should amend Rules 1.7 and 17.2.1 to clarify these more frequent filing requirements for school board candidates under the new law.

### **Statutory Text**

Prior to the amendments of HB 16-1282, the disclosure requirements in C.R.S. §1-45-108 did not refer to school board candidates or elections in the provisions setting forth filing schedules for different categories of candidates and committees. The Art. XXIX, § 2(2) definition of “candidate” lists “school district election” as separate and distinct from “special district election” and C.R.S. §1-45-103(2) incorporates that definition for statutory disclosure provisions. Because the term “school district election” is not used in the disclosure schedules of

C.R.S. §1-45-108, it was left to the Secretary to interpret and set what schedule school board candidates should follow in the year of their election.

C.R.S. §1-45-108(1)(a)(I) begins by stating that “all candidate committees” shall report to the appropriate officer according to the following provisions. Prior to the 2016 amendments, C.R.S. § 1-45-108(2)(a)(I) stated that except for major contributor reports and recall election activity, all reports that are required to be filed with the Secretary should be filed on this basic schedule:

1. Quarterly in “off-election years” (C.R.S. §1-45-108(2)(a)(I)(A)); and
2. Biweekly from the first Monday in May through the primary election; then monthly for the last six months before the “major election;” then biweekly again from the first Monday in September until the “major election;” and thirty days after “the major election in election years” (C.R.S. §1-45-108(2)(a)(I)(B)-(E)).

The statute defined “election year” for candidates as “each year in which the particular candidate committee’s candidate...appears on the ballot” and “major election” as the “election that elects a person to the public office sought by the candidate committee’s candidate.” C.R.S. §1-45-108(2)(a)(III).

However, the statute also included a separate filing calendar in C.R.S. § 1-45-108(2)(a)(II) which required annual reports in off-election years and reports to be filed twenty-one days before a primary or major election and the Friday before such election in election years. This much more limited filing schedule applies only to:

- Reports required to be filed with the municipal clerk;
- Reports filed pursuant to C.R.S. §1-45-109(1)(a)(II) – “candidates in special district elections” and the committees supporting special district candidates or special district ballot issues; and
- Reports filed pursuant to C.R.S. §1-45-109(1)(c) – “All other candidates” that file with the Secretary.

Thus, prior to the 2016 amendments school board candidates and elections were not explicitly referred to in any of the filing schedules in Section (2)(a) or the cross-referenced provisions of C.R.S. §1-45-109(1). This silence left it up to the Secretary to interpret what schedule these candidates should follow. Despite the fact that school board candidates file their reports with the Secretary and therefore could be read to fall within the general schedule in

Section (2)(a)(I) as “reports required to be filed with the Secretary of State,” the Secretary’s interpretation prior to 2016 appears to be that school board candidates follow the limited reporting schedule in Section (2)(a)(II). Campaign finance Rules defines the schedule from C.R.S. §1-45-108(2)(a)(I)(A) as “infrequent filing schedule” (Rule 1.8.1) and the C.R.S. §1-45-108(2)(a)(I)(B)-(E) schedule as “frequent filing schedule” (Rule 1.7.1) and state that both of these only apply to “state candidates and committees.” These same Rules define infrequent and frequent filing for “county, municipal and special district” candidates as the C.R.S. § 1-45-108(2)(a)(II) schedule (Rules 1.7.2 and 1.8.2).

The Rules do not refer to school board candidates in either definition of filing schedules. However, the factsheet guidance and calendar issued by the Secretary entitled “School Board Candidates for the November 3, 2015 Election”<sup>1</sup> states that school board candidates had to report only on Oct 13 (twenty-one days before the election), Oct 30 (Friday before the election), and December 3 (thirty days after the election). This means they were following the Section (2)(a)(II) schedule. The factsheet and other guidance on the Secretary’s website does not appear to include the reason why school board candidates were interpreted to follow this schedule. Because school board candidates do not meet the specific categories of those “filing with municipal clerk” or “candidates in special district elections,” the Secretary may have interpreted school board candidates to fall into the final catch-all category of “all other candidates” which file with the Secretary under C.R.S. § 1-45-109(1)(c) and therefore subject to the Section (2)(a)(II) filing calendar.

## **2016 Amendments and Legislative History**

Based on the experience of the 2015 school board elections where large amounts of spending by candidates, political committees and unregistered groups were either not reported or reported after the election, HB 16-1282 sought to amend the filing schedule in 1-45-108 to explicitly incorporate school board elections. These changes were meant to address the silence regarding school board candidates and committees acting in school board elections in the statute that formed the basis for prior Secretary interpretations of filing calendar requirements.

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<sup>1</sup> Available at <http://www.sos.state.co.us/pubs/elections/Candidates/files/SchoolBoardCandidateHandout.pdf> and a copy is included with this submission.

In addition to changes regarding electioneering communications, independent expenditures and major contributions reports related to school board elections, HB 16-1282 amended C.R.S. § 1-45-108(2)(a)(I) and (III) in order to change the reporting schedules for school board candidates. The bill added “regular biennial school election”<sup>2</sup> to both definitions of “election year” and “major election” which are used throughout the filing schedule in Section (2)(a)(I). School board candidates do not participate in primary elections, therefore, this change does not subject them to biweekly filing under Section (2)(a)(I)(B). However, this change to the definition of “major election” means that school board candidates are now required to file monthly for six months before the regular biennial school election under Section (2)(a)(I)(C) and biweekly starting the first Monday in September through the regular biennial school election under Section (2)(a)(I)(D).

Explicitly including school board elections in the definitions, plus the general rule that school board candidates must file reports with the secretary of state (introduction of Section (2)(a)(I)), changes the statute to place school board candidates in this same frequent filing category as state candidates. These specific provisions move school board candidates out of the catch-all “all other candidates” category incorporated into the Section (2)(a)(II) filing schedule through C.R.S. 1-45-109(1)(c) without changing the applicability of that separate schedule for municipal and special district candidates.

Floor debate discussion and testimony in legislative committee illustrate that HB 16-1282 was intended to make this change in frequent filing schedules for school board candidates. For example, during debate on Second Reading in the House, Rep. K.C. Becker responded to a question concerning the bill placing additional burdens on school board candidates by stating that “it will change how a school board candidate will file” to match how state candidates file in their own election years.<sup>3</sup> Rep. Becker also stated that the bill “puts school board candidates on the same campaign finance filing schedule as other state elections” in an Op-Ed column

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<sup>2</sup> This is the official term defined in C.R.S. 22-31-104 defined as the odd-numbered year November election for each school district. HB 16-1282 also added a definition with this cross reference as new C.R.S. 1-45-103(15.3).

<sup>3</sup> House Legislative Day, April 12, 2016, audio available at <http://www.leg.state.co.us/clics/cslFrontPages.nsf/Audio?OpenPage> (starting at 1:58:10).

published right after the bill passed the House.<sup>4</sup> Testimony in both the House and Senate State, Military, and Veterans Affairs Committees stated that the bill would affect filing schedules for school board candidates themselves in addition to other registered groups spending in school board elections. In the same hearing as HB 16-1282, the House committee also considered a second bill targeting school board candidate filings and contribution limits (HB 16-1140). In that discussion, Elena Nunez from Colorado Common Cause testified that the candidate disclosure provisions in the second bill conflicted with the school board candidate disclosure provisions in HB 16-1282.<sup>5</sup> In the Senate Committee hearing on HB 16-1282, Steamboat Springs School Board Member Roger Good stated that he supported the bill because there was no reason why a school board candidate should not follow the same reporting rules as a state legislative candidate.<sup>6</sup> These examples show legislative intent to adjust the school board candidate frequent filing schedule through the bill's changes to the definitions in C.R.S. 1-45-108(2)(a)(I) and (III).<sup>7</sup>

The overlapping reporting provisions of C.R.S. 1-45-108 and 1-45-109 as amended over the last 20 years are complex and changing such requirements without completely re-writing the sections may be challenging for the General Assembly. However, the overwhelming evidence is that the legislative intent of HB 16-1282 was to move school board candidates to the monthly and biweekly filing schedule in Sections (2)(a)(I)(C)-(E) in the year those candidates were on the odd-numbered November ballot. The Secretary's proposed Rules implementing the statute must reflect that legislative intent.

### **Campaign Finance Rules**

Despite the Secretary's prior interpretation of the law, current campaign finance Rules do not actually state that school board candidates file under the limited reporting schedule in C.R.S. 1-45-108(2)(a)(II). Rule 17.2.1 generally states that "candidate committees" file on "frequent

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<sup>4</sup> KC Becker, Two steps toward campaign finance reform, April 16, 2016, available at: [http://www.dailycamera.com/guest-opinions/ci\\_29771989/kc-becker-two-steps-toward-campaign-finance-reform](http://www.dailycamera.com/guest-opinions/ci_29771989/kc-becker-two-steps-toward-campaign-finance-reform).

<sup>5</sup> House SVMA Committee Hearing, March 21, 2016, audio available at <http://www.leg.state.co.us/clics/cslFrontPages.nsf/Audio?OpenPage> (starting at 7:47:40).

<sup>6</sup> Senate SVMA Committee Hearing, April 25, 2016, audio available at <http://www.leg.state.co.us/clics/cslFrontPages.nsf/Audio?OpenPage> (starting at 2:53:00).

<sup>7</sup> Fact sheets distributed to members of the House and Senate also explicitly note this change in candidate filing frequency as one of the three components of HB 16-1282 (see attached).

filing schedule” in the year in which that candidate is on the ballot. Rule 1.7.2 defines that phrase without categorizing school board candidates, but states that the schedule in C.R.S. 1-45-108(2)(a)(II) only applies to “county, municipal, and special district candidate or committee.” Rule 17.4 entitled “Special District Reporting” lists this schedule as only applying to “special district elections.” There are no other Rules specifying which filing schedules school board candidates must follow and the proposed Rules do not include any changes to add references to school board candidates in these Rules.

To the extent the Secretary believes the statutory text is ambiguous – even as amended – the Secretary has the power to fill the gap with regulations in accordance with the intent of the statute. The Rules should be amended to explicitly state what frequent filing schedule school board candidates must follow in their election years instead of merely transmitting the Secretary’s interpretation through an unofficial fact sheet and filing schedule as cited above. When amending Rules 1.7 and 17.2.1, the Secretary should follow the legislative intent to require school board candidates to file on the frequent filing schedule of C.R.S. 1-45-108(2)(a)(I)(C)-(E).

Respectfully Submitted,



Peg Perl  
Senior Counsel

**PLEASE VOTE YES**  
**HB 1282 – Alignment of School Board Elections Disclosure**

This bill increases timely disclosure of political spending in school board elections that is currently falling through the cracks of the Fair Campaign Practices Act which focuses on even-year elections. Three major components:

1) **UNREGISTERED OUTSIDE SPENDERS (e.g. corporations, individuals, unions):** Applies “electioneering communications” disclosure requirements to outside groups who run ads naming a school board candidate in the last 60 days before a school board election & requires 48-hour notices to be filed for an “independent expenditure” for/against a school board candidate in last 30 days before the school board election.

2) **REGISTERED OUTSIDE GROUPS (e.g. PACs, Independent Expenditure Committees, 527s):** Applies “electioneering communications” disclosure requirements in last 60-days; Requires 48-hour disclosure for “independent expenditures” in last 30 days; requires groups to switch to frequent (monthly, then every 2 weeks) reporting schedule once they start spending in school board election & requires 24-hour disclosure of major contributions for school board races in last 30 days before school board election.

3) **SCHOOL BOARD CANDIDATES:** Requires 24-hour disclosure of major contributions in last 30 days; changes school board candidates to regular frequent filing schedule (monthly, then every 2 weeks) in school board election years.

**Current law** triggers disclosure for these types of candidate-centered political spending only on certain dates relative to *primary and general elections*. Therefore, such disclosure is not required in odd-numbered *regular biennial school board elections*. Registered groups filing on infrequent schedule currently means disclosures for pre-election activity are not due until January *after the election*.

**HB 1282 brings school board disclosure in line with standards followed in all other state elections so that voters have timely and accurate information before school board elections.**

For Further Information:

Peg Perl, Colorado Ethics Watch: [pperl@coethicswatch.org](mailto:pperl@coethicswatch.org); 303-626-2100

Elena Nunez, Colorado Common Cause: [enunez@commoncause.org](mailto:enunez@commoncause.org); 720-339-3273

# SCHOOL BOARD CANDIDATES FOR THE NOVEMBER 3, 2015 ELECTION

## Basic Campaign Finance Information Sheet



Candidates must electronically file, via the [TRACER](#) online disclosure system, a candidate affidavit with the Secretary of State's office within 10 days of becoming a candidate.

If expending only your own money to get elected you do not have to register a candidate committee; however, for reporting periods where expenditures have taken place a disclosure report must be filed.

Candidates may not accept any contributions prior to registering a candidate committee; the committee may exist with the candidate being the only member.

Committee registration and disclosure reports are filed electronically with the Secretary of State's office and not with the county clerk and recorder.

Penalties of \$50 per day are assessed for late filing of disclosure reports; committees are required to file even if no activity (contributions and expenditures) has occurred.

Prohibited Contributors: Corporations (profit, non-profit, domestic & foreign), labor organizations, foreign governments & citizens, and \$20 or more contributions from anonymous sources (identity of the contributor is unknown).

Traditional "Pass the Hat" or "Fish Bowls" need to be modified to avoid anonymous contributions of \$20 or more.

Disclosure report due dates and reporting periods are:

Due Dates	Reporting Periods
October 13 <sup>th</sup>	<b>New candidates or committees:</b> Filing date of candidate affidavit or committee registration through October 8 <sup>th</sup> <b>Existing committees:</b> The first day after the end of the last reporting period for the last report filed through October 8 <sup>th</sup>
October 30 <sup>th</sup>	October 9 <sup>th</sup> through October 25 <sup>th</sup>
December 3 <sup>rd</sup>	October 26 <sup>th</sup> through November 28 <sup>th</sup>

### Other Important Dates to Remember

**August 5<sup>th</sup>** – First day that nomination petitions can be circulated. (Contact your local school district office or the county clerk and recorder's office to obtain a nomination petition.)

**August 28<sup>th</sup>** – Nomination petition must be filed by this date.

**August 31<sup>st</sup>** – Last day to file as a write-in candidate.

**November 3<sup>rd</sup>** – Election Day

For questions about Colorado's Campaign Finance laws and rules or accessing the State's online disclosure system (TRACER) e-mail us at [cpfhelp@sos.state.co.us](mailto:cpfhelp@sos.state.co.us), visit us at [tracer.sos.colorado.gov](http://tracer.sos.colorado.gov) or call 303-894-2200 (dial 3, then 1).

Questions about school board elections should be directed to the appointed Designated Election Official (local school board or the county clerk and recorder) or the Colorado Association of School Boards (website: [www.casb.org](http://www.casb.org)).

# CAMPAIGN AND POLITICAL FINANCE

## 2015 COUNTY FREQUENT AND ANNUAL FILING CALENDAR

**Frequent calendar** applies to (Refer to Campaign Finance Rule 17):

- Candidates or candidate committees whose office will appear on the November 3, 2015 Coordinated Election ballot
- Issue committees whose issue attempts access to or appears on the November 3, 2015 Coordinated Election ballot

### October

13 21st Day before the Election Report covers:

- October 30, 2014 through October 8, 2015

**OR**

- November 30, 2014 through October 8, 2015

30 Friday before the Election Report covers October 9, 2015 through October 25, 2015

### November

3 2015 Coordinated Election

### December

3 Post - Election Report covers October 26, 2015 through November 28, 2015

**Infrequent/Annual calendar** applies to (Refer to Campaign Finance Rule 17):

- Political Committees
- Small Donor Committees
- 527 Political Organizations
- Political Parties
- Independent Expenditure Committees
- Candidates and candidate committees whose office does not appear on the November 3, 2015 Coordinated Election ballot
- Issue committees whose issue will not attempt access to or appear on the November 3, 2015 Coordinated Election ballot

### November

2♦ Annual Report covers:

- October 30, 2014 through October 28, 2015

**OR**

- November 30, 2014 through October 28, 2015

- ♦ Day or Date affected by holiday or weekend

**The following types of reports are not required in odd calendar years:**

- 24 Hour Notice of Major Contributor
- 48 Hour Notice of Independent Expenditure
- Electioneering Communication Reports

Published by the Colorado Secretary of State

[www.sos.state.co.us](http://www.sos.state.co.us)

Campaign Finance Support Team:

Tel: (303) 894-2200 ext. 6383

Email: [cpfhelp@sos.state.co.us](mailto:cpfhelp@sos.state.co.us)

Reporting: [TRACER.sos.colorado.gov](http://TRACER.sos.colorado.gov)

### July 2015

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### November 2015

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### February 2015

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### March 2015

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### April 2015

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### June 2015

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