



NOTICE OF ADOPTION

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

May 2, 2011

Pursuant to Article XXVIII, Section 9(1)(b) of the Colorado Constitution and Section 1-45-111.5(1), C.R.S. (2010) and the rulemaking provisions of the State Administrative Procedure Act, section 24-4-103, C.R.S. (2010), I, Scott Gessler, Colorado Secretary of State, do hereby adopt and give **NOTICE** of the permanent adoption this 2nd day of May, 2011 of the following amended rules of the Colorado Secretary of State Rules Concerning Campaign and Political Finance, 8 C.C.R. 1505-6. (Additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken-type~~. *Annotations may be included*):

New Rule 15 is adopted as follows:

15. REQUESTS FOR WAIVER OR REDUCTION OF CAMPAIGN FINANCE PENALTIES

- A. A REQUEST FOR WAIVER OR REDUCTION OF CAMPAIGN FINANCE PENALTIES IMPOSED UNDER ARTICLE XXVIII, SECTION 10(2) MUST STATE THE REASON FOR THE DELINQUENCY. THE FILER SHOULD PROVIDE AN EXPLANATION THAT INCLUDES ALL RELEVANT FACTORS RELATING TO THE DELINQUENCY AND ANY MITIGATING CIRCUMSTANCES, SUCH AS MEASURES TAKEN TO AVOID FUTURE DELINQUENCIES. BEFORE A REQUEST WILL BE CONSIDERED, THE REPORT MUST BE FILED, AND A REQUEST INCLUDING THE INFORMATION REQUIRED BY THIS PARAGRAPH MUST BE SUBMITTED.
- B. REQUESTS FOR WAIVER OR REDUCTION OF CAMPAIGN FINANCE PENALTIES IMPOSED UNDER ARTICLE XXVIII, SECTION 10(2) MUST BE CONSIDERED BY THE SECRETARY OF STATE AND ADMINISTRATIVE LAW JUDGES ACCORDING TO THE FOLLOWING GUIDELINES:

SCENARIO - APPLIED IN NUMERICAL ORDER (I.E. IF #1 DOESN'T APPLY, MOVE TO #2)	RESULT

#1	A WAIVER IS REQUESTED AND ESTABLISHES GOOD CAUSE THAT MADE TIMELY FILING IMPRACTICABLE (FOR EXAMPLE, WAS IN THE HOSPITAL, GOT IN A CAR ACCIDENT, WAS STRANDED BY A BLIZZARD, ETC.). THE EVENT OR EVENTS THAT MADE TIMELY FILING IMPRACTICABLE MUST OCCUR WITHIN A REASONABLE TIME OF THE DATE ON WHICH THE REPORT WAS FILED.	WAIVE PENALTY IN FULL. A WAIVER WILL BE GRANTED WITHOUT CONSIDERATION OF PREVIOUS DELINQUENCIES.
#2	A WAIVER IS REQUESTED BUT DOES NOT PRESENT CIRCUMSTANCES THAT MADE TIMELY FILING IMPRACTICABLE (FOR EXAMPLE, FORGOT, WAS OUT OF TOWN, ELECTRONIC CALENDAR CRASHED), AND:	THIS SCENARIO #2 APPLIES ONLY TO PENALTIES OF \$100 OR MORE.
	(A) FILER HAD CONTRIBUTIONS AND/OR EXPENDITURES DURING THE REPORTING PERIOD.	<p>FIRST DELINQUENCY IN 24 MONTHS: THE PENALTY WILL BE REDUCED TO \$50.</p> <p>SECOND DELINQUENCY IN 24 MONTHS: THE PENALTY WILL BE REDUCED BY 50%.</p> <p>THIRD (OR SUBSEQUENT) DELINQUENCY IN 24 MONTHS: A REDUCTION IN PENALTY WILL NOT BE GRANTED.</p> <p>PENALTIES IMPOSED UNDER THIS SECTION ARE CAPPED AT THE HIGHER OF THE CONTRIBUTIONS OR EXPENDITURES MADE DURING THE REPORTING PERIOD. IF A DELINQUENCY IS FOUND TO BE WILLFUL, THE PENALTY CAP MAY BE INCREASED TO TWO TO FIVE TIMES THE HIGHER OF THE CONTRIBUTIONS OR EXPENDITURES MADE DURING THE REPORTING PERIOD.</p> <p>FOR PURPOSES OF THIS ANALYSIS, PREVIOUS DELINQUENCIES EXCLUDE THOSE FOR WHICH A WAIVER UNDER SCENARIO #1 WAS GRANTED.</p>
	(B) FILER HAS NO ACTIVITY (CONTRIBUTIONS OR EXPENDITURES) DURING THE REPORTING PERIOD AND THE COMMITTEE BALANCE IS ZERO.	THE PENALTY WILL BE REDUCED TO \$50.

	<p>(C) FILER HAS A FUND BALANCE GREATER THAN ZERO AND FILER HAS NO ACTIVITY (CONTRIBUTIONS OR EXPENDITURES) DURING THE REPORTING PERIOD.</p>	<p>FIRST DELINQUENCY IN 24 MONTHS: THE PENALTY WILL BE REDUCED TO \$50.</p> <p>SECOND DELINQUENCY IN 24 MONTHS: THE PENALTY WILL BE REDUCED BY 50%, SUBJECT TO A CAP OF 10% OF THE FUND BALANCE.</p> <p>THIRD (OR SUBSEQUENT) DELINQUENCY IN 24 MONTHS: THE PENALTY IS CAPPED AT 10% OF THE FUND BALANCE, AND A MINIMUM PENALTY OF \$100 WILL BE IMPOSED.</p> <p>IF A DELINQUENCY IS FOUND TO BE WILLFUL, THE PENALTY CAP MAY BE INCREASED TO 20% TO 50% OF THE FUND BALANCE.</p> <p>FOR PURPOSES OF THIS ANALYSIS, PREVIOUS DELINQUENCIES EXCLUDE THOSE FOR WHICH A WAIVER UNDER SCENARIO #1 WAS GRANTED.</p>
	<p>(D) FILER SEEKS TO TERMINATE ACTIVE STATUS, HAS A FUND BALANCE OF \$1,000 OR LESS, AND HAS NO ACTIVITY (CONTRIBUTIONS OR EXPENDITURES) DURING THE REPORTING PERIOD(S) IN QUESTION.</p>	<p>PENALTIES ARE SUBJECT TO A CAP EQUAL TO THE TOTAL AMOUNT OF THE FILER'S FUND BALANCE AS OF THE DATE ON WHICH THE DELINQUENT REPORT WAS FILED, IF THE COMMITTEE IS PROMPTLY TERMINATED.</p>
#3	<p>A WAIVER IS REQUESTED, BUT SUBMITTED MORE THAN 30 DAYS AFTER THE DATE OF PENALTY IMPOSITION. FOR PURPOSES OF THIS ANALYSIS, A FILER HAS 30 DAYS FROM THE DATE ON WHICH THE FINAL NOTICE OF PENALTY IMPOSITION IS ISSUED FOLLOWING THE FILING OF THE DELINQUENT REPORT. UNTIL AN OUTSTANDING REPORT IS FILED, PENALTIES SHALL CONTINUE TO ACCRUE AT A RATE OF \$50 PER DAY AND NO REQUEST FOR WAIVER WILL BE CONSIDERED.</p>	<p>A REQUEST WILL NOT BE CONSIDERED UNLESS GOOD CAUSE HAS BEEN SHOWN FOR FAILURE TO MEET THE 30-DAY WAIVER FILING REQUIREMENT.</p>

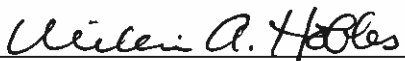
- C. FOR WAIVER REQUESTS THAT APPLY TO MORE THAN ONE PENALTY, THE GUIDELINES WILL BE APPLIED SEPARATELY TO EACH PENALTY IN CHRONOLOGICAL ORDER USING THE SINGLE REQUEST AS THE BASIS FOR EACH.

- D. FILERS MAY REQUEST THAT THE SECRETARY OF STATE RECONSIDER A REQUEST FOR WAIVER OR REDUCTION OF CAMPAIGN FINANCE PENALTIES. ANY REQUEST FOR RECONSIDERATION MUST PRESENT ADDITIONAL MATERIAL FACTS THAT ARE SIGNIFICANTLY DIFFERENT THAN THOSE ALLEGED IN THE ORIGINAL REQUEST FOR REDUCTION OR WAIVER, AND MUST BE SUBMITTED TO THE SECRETARY OF STATE, IN WRITING, WITHIN 30 DAYS OF THE DATE ON WHICH THE WAIVER DECISION WAS MAILED.
- E. THE SECRETARY OF STATE OR ADMINISTRATIVE LAW JUDGE MAY CONSIDER ANY ADDITIONAL FACTORS THAT ESTABLISH GOOD CAUSE OR MAY OTHERWISE BE RELEVANT TO THE REQUEST FOR WAIVER OR REDUCTION OF CAMPAIGN FINANCE PENALTIES. IN CONSIDERING A REQUEST, THE SECRETARY OF STATE OR ADMINISTRATIVE LAW JUDGE MAY REQUEST ADDITIONAL INFORMATION, INCLUDING BUT NOT LIMITED TO FINANCIAL OR OTHER RECORDS MAINTAINED BY THE FILER.
- F. THE SECRETARY OF STATE WILL RESPOND TO REQUESTS FOR WAIVER OR REDUCTION OF CAMPAIGN FINANCE PENALTIES WITHIN 60 DAYS. FAILURE TO RESPOND WITHIN 60 DAYS, HOWEVER, WILL NOT CONSTITUTE AN APPROVAL OF THE REQUEST.

These new and amended rules shall take effect twenty (20) days after publication in the Colorado Register in accordance with the State Administrative Procedures Act.

A written Statement of Basis, Purpose and Specific Statutory Authority is attached and hereby incorporated herein by reference.

Dated this 2nd day of May, 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
Rules Concerning Campaign and Political Finance
8 CCR 1505-6**

May 2, 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 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. Additionally, the rule amendments are necessary to answer questions arising under Article XXVIII of the Colorado Constitution and Article 45 of Title 1, Colorado Revised Statutes.

The adoption of specific amendments to the Campaign and Political Finance Rules is necessary as follows:

- Rule 15 is adopted to formalize the Secretary of State's policy for processing requests for waiver of campaign finance penalties imposed under Article XXVIII, Section 10(2)(a) of the Colorado Constitution. In addition, the rule is necessary to provide a fair and transparent process with clear standards for the evaluation of waiver requests.

II. Statutory Authority

Amendments to the Colorado Secretary of State "Rules Concerning Campaign and Political Finance" would be adopted 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 "[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.]”