



NOTICE OF PROPOSED RULEMAKING

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

April 2, 2010

Pursuant to the requirements of section 24-4-103(3)(a), C.R.S., (2009), notice of proposed rulemaking is hereby given by the Secretary of State. A rulemaking hearing will be held on **May 18th, 2010 from 2:00 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. All interested persons will be afforded an opportunity to be heard on the subject of revisions and amendments to the Secretary of State's "Rules Concerning Campaign and Political Finance," 8 CCR 1505-6.

Subject of the Proposed Rulemaking

The Secretary of State will consider amendments and revisions to the Colorado Secretary of State "Rules Concerning Campaign and Political Finance" as may be necessary or appropriate to administer the provisions of Article XXVIII of the Colorado Constitution and Article 45 of Title 1, Colorado Revised Statutes. The Secretary of State shall also consider rules to implement the holding of the Supreme Court of the United States in *Citizens United v. Federal Election Commission*, 558 U.S. ____ (2010) and the decision by the Supreme Court of Colorado in *In re: Interrogatories Propounded by Governor Bill Ritter, Jr., Concerning the Effect of Citizens United v. Federal Election Commission*, 558 U.S. ____ (2010) on Certain Provisions of Article XX[V]III of the Constitution of the State of Colorado, No. 10SA43 (Colo. Mar. 22, 2010), and such other rule amendments as may be necessary to answer questions arising under Article XXVIII of the Colorado Constitution and Article 45 of Title 1, Colorado Revised Statutes.

Authority for Proposed Rulemaking

Revisions and amendments to the Secretary of State's "Rules Concerning Campaign and Political Finance" [8 CCR 1505-6] are proposed pursuant to the following statutory and constitutional provisions:

1. Article XXVIII, Section 9(1)(b), 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]."

2. Section 1-1-107(2)(a), C.R.S., (2009), 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., (2009), 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.]”

Copies of the initial draft 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.

A final copy of the proposed rules for consideration at the public rulemaking hearing will be posted on the Secretary of State website and made available to the public no later than **May 13th, 2010** in accordance with section 24-4-103(4)(a), C.R.S., (2009), which states that “[a]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing . . . shall be made available to any person at least five days prior to said hearing.”

The rulemaking hearing on **May 18th, 2010** will be held in accordance with section 24-4-103, C.R.S., (2009). Written and oral data, comments, and arguments will be received from all interested parties. Written submissions must be filed at or before the commencement of the hearing on **May 18th, 2010** at 2:00pm in order to be considered. Oral testimony may be limited in order to allow the proceedings to go forward with reasonable promptness and efficiency. The hearing 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.

Dated this 2nd Day of April, 2010.



William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State



Proposed Statement of Basis, Purpose, and Specific Statutory Authority

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

April 2, 2010

1. Basis and Purpose

This statement pertains to the proposed amendments to the Colorado Secretary of State "Rules Concerning Campaign and Political Finance." The amendments and revisions to these rules are proposed 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 Secretary of State finds that the proposed rules are necessary to answer questions arising under Article XXVIII of the Colorado Constitution and Article 45 of Title 1, Colorado Revised Statutes, and to make changes necessary to conform to the rulings of the United States Supreme Court in *Citizens United v. Federal Elections Commission*, 558 U.S. _____ (2010) and the Colorado Supreme Court in *In re: Interrogatories Propounded by Governor Bill Ritter, Jr., Concerning the Effect of Citizens United v. Federal Election Commission*, 558 U.S. _____ (2010) on Certain Provisions of Article XX[V]III of the Constitution of the State of Colorado, No. 10SA43 (Colo. Mar. 22, 2010).

In the *Citizens United* case, the Supreme Court overruled *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, invalidating any "prohibition on the use of corporate treasury funds for express advocacy" (*Citizens United*, slip op. at 50, internal quotations omitted). The Court held that the prohibitions in the Federal Election Campaign Act (FECA) against corporate spending on independent expenditures or electioneering communications are unconstitutional. In the *Interrogatories* case, the Colorado Supreme Court held that similar prohibitions on corporate and labor organization spending under Colorado law are unconstitutional under the *Citizens United* ruling.

The following specific amendments to the Campaign and Political Finance Rules are proposed to conform the rules to the decisions in those cases:

- Rule 4.12, concerning exceptions to the state constitutional provision prohibiting funding by corporations and labor organizations for electioneering communications, would be repealed to reflect the Supreme Court's determination in the *Citizens United* and *Interrogatories* cases, which invalidate any prohibition on corporate funding of

electioneering communications. Because rule 4.12 carved out a narrow exception for certain corporations that were not subject to the prohibition, it is no longer necessary.

- Rule 4.22, which prohibits corporations and labor organizations from making expenditures expressly advocating the election or defeat of a candidate, would be repealed to reflect the rulings in the *Citizens United* and *Interrogatories* cases, which lifted bans on corporate and labor organization funding for independent expenditures and electioneering communications.
- New rule 4.26 would be adopted to clarify reporting requirements for corporations and labor organizations providing funding for electioneering communications.
- New Rule 9.6 is would be adopted to reflect the holdings in the *Citizens United* and the *Interrogatories* cases by stating that corporations and labor organizations shall not be prohibited from making independent expenditures or from providing funding for electioneering communications and by affirmatively requiring that such expenditures be reported.
- The amendments to Rules 14.3 and 14.4 clarify campaign finance reporting requirements for corporations and labor organizations providing funding for independent expenditures and electioneering communications.

2. Rulemaking Authority

Amendments to the Colorado Secretary of State “Rules Concerning Campaign and Political Finance” are 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:
“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., (2009), 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., (2009), 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

Preliminary Draft of Proposed Rules

April 2, 2010

Disclaimer: This draft is not yet final. The proposed changes to be considered at the public rulemaking hearing may be different than the proposed changes in this draft. This draft is submitted to the Department of Regulatory Agencies for the purpose of complying with section 24-4-103(2.5), C.R.S., which requires that a draft be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

A final copy of the proposed rule changes will be available to the public no later than May 13th, 2010, and a copy will be posted on the Department of State's web site, in compliance with the requirement of section 24-4-103(4)(a), C.R.S., that "[a]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing . . . shall be made available to any person at least five days prior to said hearing."

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

Rule 4.12 would be repealed as follows:

- 4.12 ~~Article XXVIII, Section 6(2), concerning the prohibition against funding by corporations and labor organizations for electioneering communications, shall not apply to any corporation that:~~
- ~~a. Was formed for the purpose of promoting political ideas and cannot engage in business activities~~
 - ~~b. Has no shareholders with a claim on its assets or other income~~
 - ~~c. Was not established by, and does not accept contributions from business corporations or labor organizations. REPEALED.~~

Rule 4.22 would be repealed as follows:

- 4.22 ~~In accordance with Article XXVIII, sections 2(8), 2(9), and 3(4)(a) of the Colorado Constitution, corporations or labor organizations shall not make expenditures, including independent expenditures, that expressly advocate the election or defeat of a candidate. REPEALED.~~

New rule 4.26 would be adopted as follows:

- 4.26 FOR DISCLOSURE REQUIRED PURSUANT TO SECTION 1-45-108(1)(A)(III), C.R.S., IF THE PERSON MAKING THE EXPENDITURE FOR ELECTIONEERING COMMUNICATIONS IS A CORPORATION OR LABOR ORGANIZATION, DISCLOSURE OF THE NAMES AND ADDRESSES OF PERSONS CONTRIBUTING \$250 OR MORE USED TO MAKE ELECTIONEERING COMMUNICATIONS SHALL ONLY BE REQUIRED IF SUCH MONEYS ARE SPECIFICALLY INTENDED TO BE USED FOR ELECTIONEERING COMMUNICATIONS.

New Rule 9.6 would be adopted as follows:

- 9.6 IN ACCORDANCE WITH THE DECISION OF THE SUPREME COURT OF COLORADO IN *IN RE: INTERROGATORIES PROPOUNDED BY GOVERNOR BILL RITTER, JR., CONCERNING THE EFFECT OF CITIZENS UNITED V. FEDERAL ELECTION COMMISSION*, 558 U.S. ____ (2010) ON CERTAIN PROVISIONS OF ARTICLE XX[V]III OF THE CONSTITUTION OF THE STATE OF COLORADO, NOTWITHSTANDING ARTICLE XXVIII, SECTION 3(4)(A) AND SECTION 6(2) OF THE COLORADO CONSTITUTION, CORPORATIONS AND LABOR ORGANIZATIONS SHALL NOT BE PROHIBITED FROM MAKING INDEPENDENT EXPENDITURES OR FROM PROVIDING FUNDING FOR ELECTIONEERING COMMUNICATIONS. SUCH EXPENDITURES SHALL BE REPORTED IN ACCORDANCE WITH SECTION 1-45-108(2), C.R.S., AND THIS RULE.

Rule 14.3 would be amended as follows:

- 14.3 For the purposes of section 5, article XXVIII, any person, INCLUDING A CORPORATION OR LABOR ORGANIZATION, who is otherwise not required to file reports with the Secretary of State or county clerk and who obligates funds exceeding \$1,000 for any single independent expenditure more than 30 days prior to a primary or general election shall deliver notice to the Secretary of State in accordance with the reporting schedule established for political parties in section 1-45-108 (2), C.R.S. [*IN RE: INTERROGATORIES PROPOUNDED BY GOVERNOR BILL RITTER, JR., CONCERNING THE EFFECT OF CITIZENS UNITED V. FEDERAL ELECTION COMMISSION*, 558 U.S. ____ (2010) ON CERTAIN PROVISIONS OF ARTICLE XX[V]III OF THE CONSTITUTION OF THE STATE OF COLORADO, No. 10SA43 (COLO. MAR. 22, 2010)]

Rule 14.4 would be amended as follows:

- 14.4 Notwithstanding rules 14.1 and 14.2, any person (including a natural person, entity, candidate committee, political committee, small donor committee, political party, or 527 political organization, CORPORATION, OR LABOR ORGANIZATION) who obligates funds in any amount for an independent expenditure, fewer than 31 days before a primary or general election, shall deliver notice to the Secretary of State within 48 hours of obligating funds for such expenditure. [*IN RE: INTERROGATORIES PROPOUNDED BY GOVERNOR BILL RITTER, JR., CONCERNING THE EFFECT OF CITIZENS UNITED V. FEDERAL ELECTION COMMISSION*, 558 U.S. ____ (2010) ON CERTAIN PROVISIONS OF ARTICLE XX[V]III OF THE CONSTITUTION OF THE STATE OF COLORADO, No. 10SA43 (COLO. MAR. 22, 2010)]